Fundamentals of Problem-Solving Courts

Hosted by:

State Court Administrative Office and
Michigan Association of Treatment Court Professionals

Wednesday, April 14, 2021
8:00 a.m. – 4:00 p.m.

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Fundamentals of Problem-Solving Courts

April 14, 2021

Guidelines for Webinars

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1. This webinar is interactive. Please ask your questions by typing in the chat box. There will be a brief time for questions after each session, as well as at the conclusion of the Fundamentals event.
2. If you are participating by speaker phone and not from a computer, please use *9 to raise your hand; you will then be prompted to use *6 to unmute yourself.
2. If you are called on to speak and unmuted, please identify yourself.
3. Please be brief and be considerate of other participants and allotted time.
4. Please minimize outside noise especially if on conference phone. All attendees will be muted.

Zoom Functions

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1. Video cameras will be enabled.
2. Microphone icon – all participants will be muted by PSC Staff while in the main Zoom meeting room.
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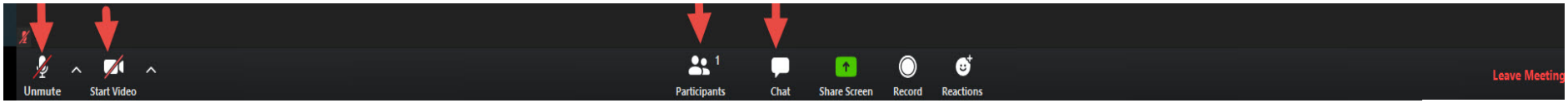

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Survey will be sent via email.

Contact Information during the Webinar:

Lisa Harris - harrisl@courts.mi.gov
Carol Knudsen – knudsenc@courts.mi.gov
Dian Gonyea - gonyead@courts.mi.gov
courtservices@courts.mi.gov

Thank you for attending. Be safe!

SCAO and MATCP Resources and Continuing Education

Court Services – PSC Team

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- Grant Management
- Certification
- Data and Program Evaluation
- Training and Technical Assistance

PSC Team

- **Andrew Smith, Problem-Solving Court Manager**
- **Lee Ann Gaspar, Problem Solving Court Analyst**
  MDCGP, SSSPP Grant Program, Family Treatment Courts
- **Dian Gonyea, Problem- Solving Court Analyst**
  PSC and SSPP Data and Annual Reporting, Program Evaluation, DCAS
- **Lauren Fetner, Problem-Solving Court Analyst**
  MVTCGP, WebGrants, Transfers
- **Marie Pappas, Problem-Solving Court Analyst**
  OSHP Grant, Byrne JAG Grant, Federal Grant Compliance, MDCGP Claims
- **Daisy Beckett, Problem-Solving Court Analyst**
  MMHCGP, DCCMIS, PSC Certification
- **Carol Knudsen, Administrative Assistant**
- **Lisa Harris, Administrative Assistant**

SCAO Website

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- Certification
- Lists of Problem-Solving Courts in Michigan
- Drug Court
- Mental Health Court
- Veterans Treatment Court
- Swift and Sure Sanctions Probation Program
- Confidentiality
- Grant Management
- DCAS and Program Evaluation
- DCCMIS
- Due Process
- Ignition Interlock

Michigan Association of Treatment Court Professionals

Katharine M. Hude (Kate), MATCP Executive Director
kate@matcp.org

Hon. Harvey J. Hoffman (ret), MATCP Legislative Director
judgehoffman@gmail.com

General Info
info@matcp.org

MATCP
824 N. Capitol Ave.
Lansing, MI 48906
517.253.0896

SAVE THE DATE – 2021 Conference, March 2-3, DeVos Place, Grand Rapids

Michigan Association of Treatment Court Professionals

Alma Valenzuela, Director of Probation & Community Corrections, Ottawa County & MATCP Board President
avalenzuela@miottawa.org

Hon. Patrick Bowler (ret), SCAO Judicial Liaison & MATCP Board Member
pcbowler@gmail.com

Hon Geno Salomone, 23rd District Sobriety Court Presiding Judge & MATCP Board Member
gsalomone@ci.taylor.mi.us

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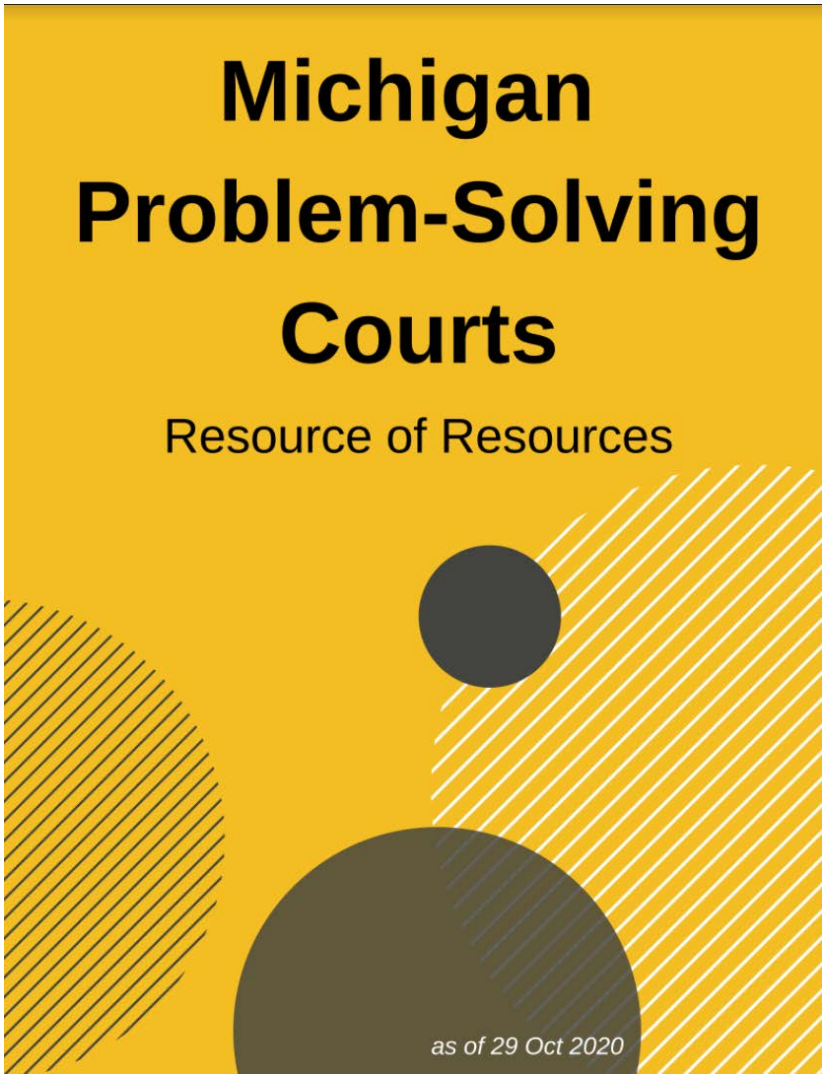

SCAO-PSCs & MATCP
Resource of Resources

Will be continuously updated – available now on MATCP's website
matcp.org
on Home Page &
under "Resources", then "MATCP Resources"

Team Building

Hon. Patrick Bowler, ret.

Treatment Courts are Court Reform

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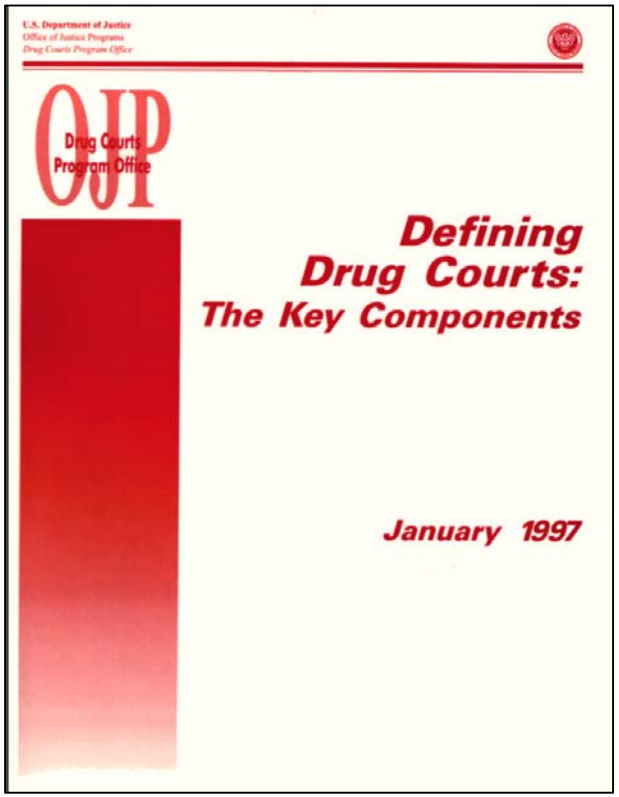
- Treatment courts are the single most successful intervention in our nation's history for leading people living with substance use and mental health disorders out of the justice system and into lives of recovery and stability.
- Instead of viewing addiction as a moral failing, Problem-Solving Courts view it as a disease. Instead of punishment, they offer treatment. Instead of indifference, they show compassion.

NADCP

The Beginning of the Revolution
The Ten Key Components



Fidelity to the Model

It is critical to adhere to the 10 Key Components:

- It's the Law
- History of Success

How Do They Work

10 Operational Characteristics Problem-Solving Courts Share As Benchmarks for Performance (Tweaked for Other Problem-Solving Courts)

Problem-Solving Courts – A "New Way" of Doing business

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- ✓Partner with Treatment
- ✓Transform Roles
- ✓Non-adversarial/Team
- ✓Shared Goal of Recovery
- ✓Treatment (Other) Issues
- ✓Staffing Hearing – Team Discussions
- ✓Status Review Hearing
- ✓Sanctions and Incentives
- ✓Immediate Responses

Communication!

Problem-Solving Courts: The Goal

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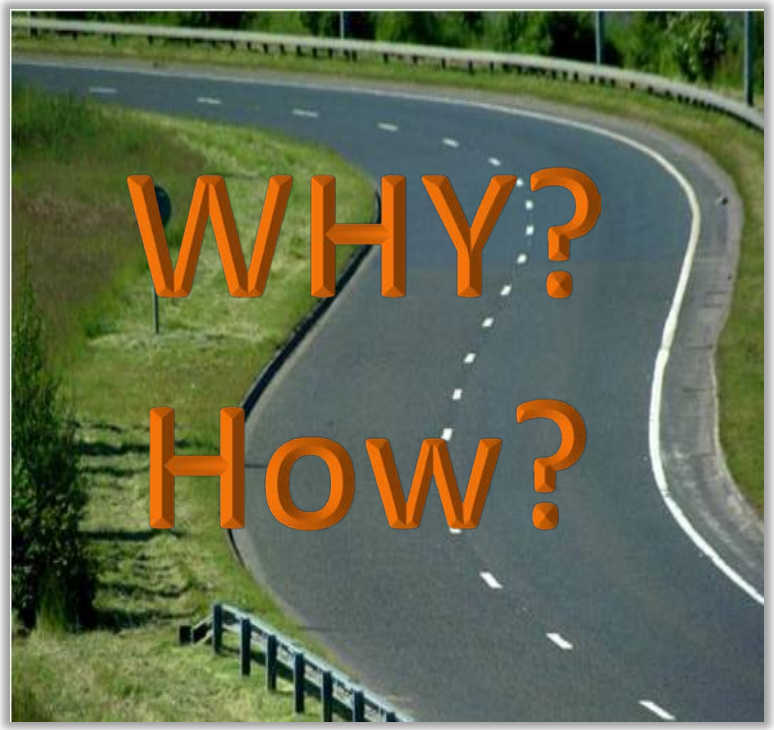
RECOVERY



Mission Statement

- ✓ Partnering with Treatment for S.U.D.
- ✓ Changing Behaviors (HR/HN)
- ✓ Public Safety

Self-Directed, Sustained, Positive, **Behavior-Change**

A Multidisciplinary Team in a Multidisciplinary Environment

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A dedicated team of professionals

- ✓ Managing the day-to-day operations of the drug court,
- ✓ Sharing information and reviewing participant progress during pre-court staff meetings and status hearings,
- ✓ Contributing observations and recommendations within team members' respective areas of expertise, and
- ✓ Delivering or overseeing the delivery of legal, treatment and supervision services.

NADCP Best Practices, Standard VII

Every team member must see their job as the facilitation of the participant's rehabilitation.

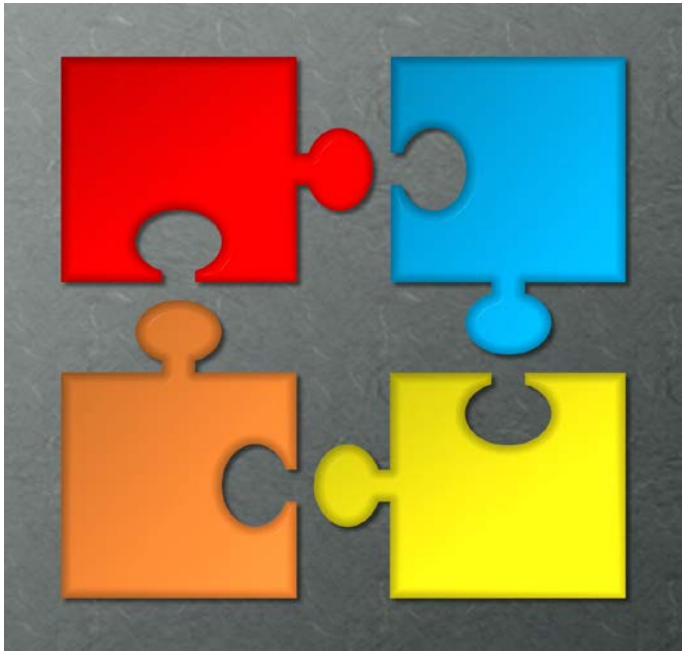
Goal of the Treatment Court Team

To find solutions that will be mutually beneficial to the participant, to the larger community, and to each of the contributing partners, prosecution, defense, treatment, law enforcement and the court.

Opioid Crisis

Cost Savings

Reduction in Recidivism



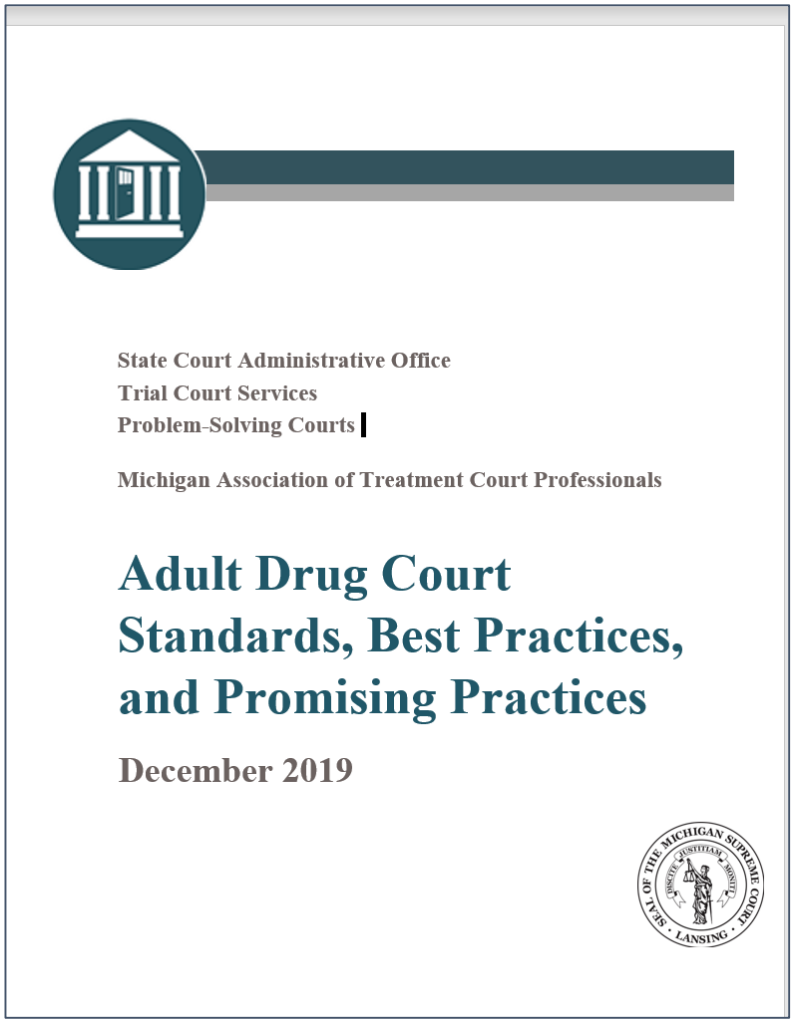
Positive, Self-sustaining Recovery

Availability of Treatment

Michigan 'Required' Best Practices

Chapter 5:
The Drug Court Team

The memorandum of understanding shall describe the role of each party.
(MCL 600.1062(1))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Trial Court Services
Problem-Solving Courts

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Adult Drug Court Standards, Best Practices, and Promising Practices

December 2019

Court Coordinator
Treatment Provider
Judge
Advocates
Participant
Defense Counsel
Probation
Law Enforcement
Mental Health
Prosecutor

Team Building
Why is it Important?

- ✓A Problem-Solving Court team works together to solve problems in order to achieve the common goals and objectives of the organization

Success!

- ✓Every member of the team has a learning style which can complement someone else's style

- ✓Judicial leaders must know their own style as well as the styles of other team members in order to effectively utilize everyone's strengths.

Problem-Solving Court Team

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- **Each team member** has an important role and brings a core competency and responsibility to the Problem-Solving Court Team.
- **Each team member** brings a set of ethical mandates for their respective profession.
- It is the judge's job to reinforce those roles.

A Dedicated Multidisciplinary Team of Professionals

Team Member Expectations

- Most team members come from other agencies, organizations, or departments; they must adjust to a new environment.
- Team members must learn how to participate as a Team Member.
- Roles must be clearly defined and included in written policies and procedures.

Research:
The Key to Success

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Judicial Leadership

"We *need* you Judge!"

The Work of the Judge and Treatment Court Team

- By approaching a participant's interests, concerns and values with curiosity, and;
- Openly exploring the participant's motivations for change, the treatment court team will begin to get a better understanding of the participant's motivations and potential barriers to change. (Information is shared in staffing.)
- The team must help the participant find their goals and values and their reasons and desires to change and bolster their ability to change.
- The participant accepts responsibility for choosing and carrying out positive personal change.

Note: Certain types of brief counseling interactions are as beneficial as more lengthy interventions

The Judge & Every Player on the Team Working – In Sync

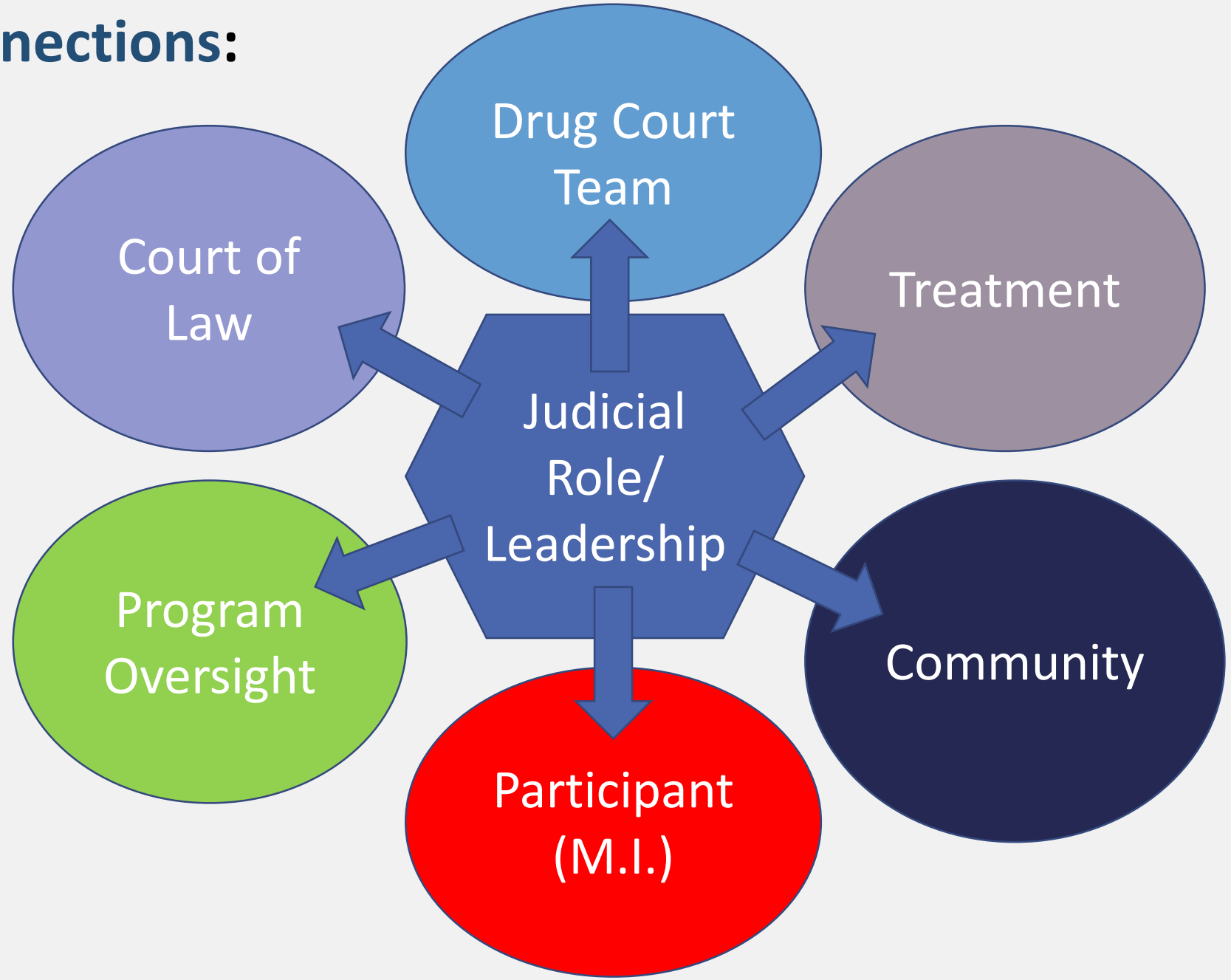
Goal

To create the structure and the atmosphere that are conducive to change.

- ✓ The therapeutic work of treatment is shared and utilized by all the working professionals of the treatment court team.
- ✓ By using a basic understanding of human nature and common sense the participant can be steered to a path of positive behavior change, long-term recovery, and a life of value and goals.

The Problem-Solving Court Judge

Connections:



The Judge and the P.S. Court Team

- Judge listens to other members of the team and helps facilitate team consensus.
- Treats other members of the team with respect while maintaining the position as judge and final authority.
- Remains flexible to change. (New Research/Training)
- Assures adherence to the 10 key components and the best practices and standards.
- Promotes and facilitates the therapeutic principles underlying the drug court model. (i.e. M.I.)
- Stays focused on the goal (The Mission Statement) and focuses others on the goal.

Judicial Leadership
Drug Court Team

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How does your leadership style impact your team? Are you a full partner?

Communication

Success

Participation

Motivation

Validation

Sustainability

PROSECUTOR "NON-ADVERSARIAL APPROACH"

- Advocates for public safety
- Advocates for victim interest
- Holds participants accountable for meeting their obligations
- May help resolve other pending legal cases that impact participants' legal status or eligibility
- Proverbial "rock and a hard place" - If confronted with information they should act on ethically, but cannot act on legally

PROSECUTOR - RESEARCH

Prosecutor attends staffing

Costs Savings ↑ 171%

Prosecutor Attends Court Sessions

Recidivism ↓35%

NPC Research Key Components Study 2008

Defense Attorney "Non-Adversarial Approach"

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Typically an assistant public defender or private defense attorney specializing in treatment court cases

- Ensures constitutional rights are protected
- Advocates for participant's best interests/adversary for participant's stated interests (M.O.U.)
- Handles day to day issues related to participants in the treatment court
- Must define their role as "defense attorney" on the team
- Unlike Treatment Providers, no federal statute has provided Defense Attorneys with a consent to set aside attorney-client privilege

DEFENSE ATTORNEY - RESEARCH

Defense Attorney attends staffing

Costs Savings ↑ 93%

Defense Attorney attends court sessions

Recidivism ↓35%

NPC Research Key Components Study 2008

PROBATION OFFICER/ CASE MANAGER

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- Active participant in review hearing and staffing meetings
  - Provides participant updates to the team
- Participant
  - Drug testing
  - Home visits
- Linking and referring to community-based resources
- Leads the team in Evidence-Based Practices (Corrections)
- May also serve as the coordinator

COORDINATOR

- Program oversight
  - Ensures program is compliant with standards and best practices
  - Oversee the development and creation of Policy & Procedure Manual, participant handbook
  - Grant requirements
  - Outside agency point-of-contact
  - Data collection and reporting
  - Coordinates staff/team meetings and trainings

Treatment Provider/ Community Mental Health Services/VJO

- Active participant in review hearing and staffing meetings.
  - Updates the team on the participant's treatment compliance
  - Provides a treatment related perspective on sanctions and incentives
- Prepares and provides clinical assessments
- Determines level of care and develop treatment plans

Partnering with Treatment

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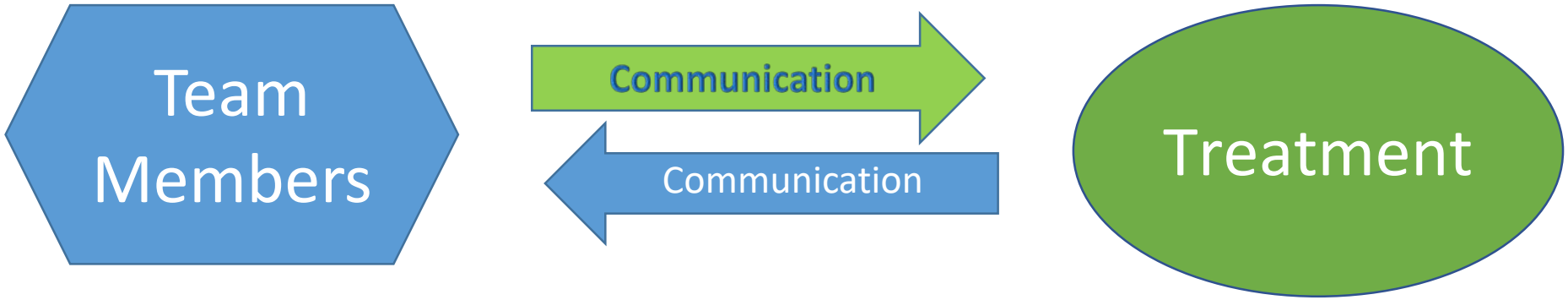
"Team must be knowledgeable of addiction, alcoholism, and pharmacology generally and apply that knowledge to respond to compliance in a **therapeutically appropriate manner."**

Does the Problem-Solving Court Team Understand:

- ✓ What Treatment Modality is being utilized?
- ✓ What Alternative Treatment Services are Available?
- ✓ What Ancillary Services are Available?
- ✓ What Motivational Communication Techniques are being Utilized?

A Treatment Court



Does Treatment Understand:

- ✓ Drug Treatment Court Mission and Goals?
- ✓ Court's Role in the community, Compliance?
- ✓ The Principles and Policies Guiding the Problem-Solving Court Team?
- ✓ The Expectations of Communication, Delivery of Services, and collaboration?

Law Enforcement

- Eyes and ears on the street
- Home/employment visits
- Liaison between the drug court and law enforcement community
- Presents perspectives of law enforcement as it relates to issues of participant accountability
- Represents ‘support’ for the participant and,
- ‘Change’ in perspective for the participant.

Other Team Members*

- Doctor for MAT and use of 'other' medications
- Evaluator
- Community Representatives
- MI Department of Health & Human Services
- Area Schools
- Peer Mentors
- Veteran Mentor Coordinator
- Vocational Advisors
- Sponsors from Self-Help Community

*VIP: Confidentiality Requirements

VTC- Mentor Program

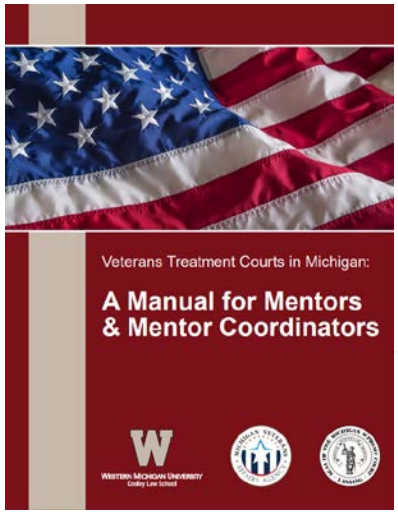
A veterans treatment court shall provide an individual admitted to the court with the following:

- A mentorship relationship with another veteran who can offer the participant support, guidance, and advice. It is the intent of the legislature that, where practicable, the assigned mentor should be as similar to the individual as possible in terms of age, gender, branch of service, military rank, and period of military service.

  (MCL 600.1207(1)(b))

- What a mentor does
  - Engage
  - Encourage
  - Empower

- What a mentor does NOT do
  - Attend staffing
  - Suggest sanctions
  - Be the eyes and ears of the program



PSYCHARMOR Institute
Educating a Nation

The Staffing

Purpose: To present a coordinated response to offender behavior and establish the **Framework** for the Status Review.

- **Review participant progress:** assessments, attendance, drug/alcohol tests, counseling, Compliance with court requirements.
- **Review change:** attitudinal improvements, increased insight or motivation for change.
- M.A.T. issues.
- Motivational Communication Discussions.

Provide Insight for the judge for Review Hearings.

Status Review Hearing

- ✓ Open Hearing*
- ✓ Confidentiality – rule of ‘de minimis’
- ✓ Opportunity for judge to ‘talk’ but mostly ‘listen’ to the participant.
- ✓ Courtroom as ‘Theatre’

Motivational Interviewing

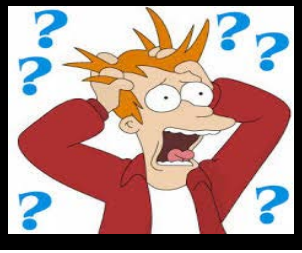
Motivational Communication

Team Care

The most important resource for a Treatment Court is the Human Resource.

- Maintain healthy team members and a healthy team relationship
- Deal with the Negative and Focus on the positive.
- Celebrate the small victories, positive news.
- Plan ahead for the stressful events; crisis and 'compassion fatigue.' (Warning signs)
- Develop strategies for how to properly address sources of conflict and Take time to address conflict.
- New Staff Training Guide: Orientation.

(www.ndci.org/resources/sample-documents/)



Contact Information:

Judge Patrick C. Bowler, ret.
(616) 644-2178
pcbowler@gmail.com

Lauren Fetner, SCAO
(517) 373-0260
fetnerl@courts.mi.gov

Next topic: Target Population, Screening, and Assessments

Presented by: Daisy Beckett and Lee Ann Gaspar

Target Population, Eligibility Criteria Screening, and Assessing

Lee Ann Gaspar and Daisy Beckett

Process Flow

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- Target Population
- Who is eligible for your program?
- Identification and Referral
- Screening (Legal / SUD)
- Assessing (Criminogenic Risk / Clinical)

Target Population

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1. Community Need
   - Shift in drugs in community
   - Shift in populations
2. Resources availability
   - Inpatient
   - CMH
   - VA
   - Ancillary services
3. High Risk/ High Need

Eligibility Criteria

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What should be considered?

- Nature of Offense
- Past Offense History
- Residency
- Transportation Restrictions
- Medical or Mental Health Issues

<u>Best Practices:</u>

The drug court allows charges other than substance use or possession.

Don’t omit those that have sold drugs.

Drug courts omit those with severe health issues.

Eligibility Criteria

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Identifying early and promptly!

Best Practices:

- Time between arrest and entry into program is less than 50 days.
- Courts where the time between arrest and program entry is 50 days or less were able to reduce recidivism by as much as 63 percent.

ID and Referral

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- Law Enforcement
- Jail
- Prosecutor
- Defense Counsel
- Judge
- Probation / Parole
- Family / Self
- Develop check list for attorneys that may remind them of potential participants.

- A team member clearly explains the program expectations and individual rights to the participant

Screening

Screening process determines eligibility and program appropriateness (SUD and/or MI)

- Legal Screening
- Screening for Program Eligibility
    1. Screening tools and interviews.
    2. Most often done by PO/PC or clinician or VJO
    3. Screen while in custody or out

Screening Tools

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- NIDA (National Institute on Drug Abuse)
- AUDIT (Alcohol Use Disorders Id Test) - free
- DAST (Drug Abuse Screening Test) - free
- MAST (Michigan Alcohol Screening Test) - free
- CAGE (Alcohol) - free
- PTSD checklist
- GAD (General Anxiety Disorder) scale - free

- Screening tools do NOT give a diagnosis nor assess for level of care. Simply an indicator that there may be a problem.

Assessments: Clinical and Criminogenic

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1. **Treatment providers perform clinical assessments to determine diagnosis and level of care.**

Treatment Plans are developed after diagnosis by clinician.

2. **Assessments determine the level of monitoring.**

Criminogenic Risk/Needs assessments administered by trained court staff or specialty court clinician.

Clinical Assessments = DX SUD & MI

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Assessments should include:

- A complete review of the individual's history regarding the use or abuse of any controlled substance or alcohol: abuse v. dependence.
- A review of any special need or circumstances of the individual that may affect the individual's ability to receive treatment and follow court orders.
- Contact with accredited or licensed treatment providers.
- A determination of whether the individual poses a risk of danger or harm to self, others, or the community.
- A determination that the clinical diagnosis caused or contributed to the offense.

Clinical Assessments and TX

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Delay in accessing treatment is one of the major causes of program dropout, and is a particular problem among offender programs.

Criminogenic Risk Assessment

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- Assessing for risk of recidivating
- Does not mean likelihood of completing program or relapsing.
- 8 Criminogenic Risk Factors (Andrews and Bonta 2010)
  - Antisocial Attitudes
  - Antisocial Peers
  - Antisocial Personality
  - Family/marital
  - Substance Abuse
  - School/Work
  - Leisure/Recreation
  - Criminal History

High Risk/ High Need

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- Drug courts that focus their efforts on high-risk/ high-need offenders reduce crime approximately twice as much as those serving less serious offenders and return approximately 50 percent greater cost-benefits to their communities.

- Recidivism among low-risk offenders increases when they are included in programs with higher-risk offenders.

Assessment Best Practices

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- Tools must be reliable and validated!!
- The validation sample is similar to program participants.
- Reexamine dynamic risk factors after program admission.

- NDCI: Drug Court Practitioner Fact Sheet:

"Selecting and Using Risk and Need Assessments"

Confidentiality And Due Process

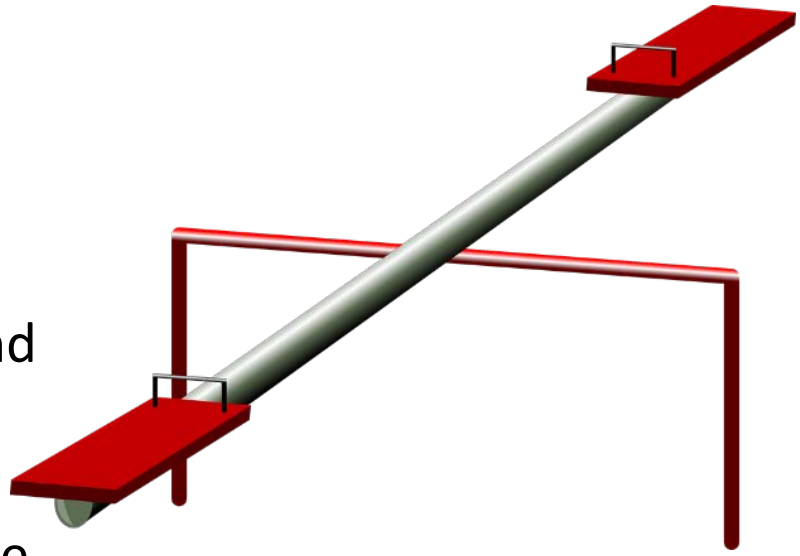
Hon. Patrick C. Bowler, ret.

Protected Health Information Balancing Act

Successful treatment relies on a relationship of trust between patients and their treatment providers.

The federal and state laws generally reflect an attempt to strike a balance to protect that trust, thus 42 CFR, part II.

Sharing health information: critical to positive public health and safety outcomes.



Mental Health and Substance Use Information: Personal & Private

Confidentiality Laws

Question: Why Should Treatment Courts be Concerned with Confidentiality?

Four Reasons

1. A Treatment Court is a Court of Law. 42 CFR part 2 is a Federal Law.
2. Certification/Best Practice Standards
3. Stigma.

   In light of the current national opioid crisis, now more than ever – people living with SUDs depend on Part 2's protections to stay and complete their treatment without fear of negative consequences.

4. Trust: Confidentiality Promotes Trust.

A Treatment Court is a Court of Law

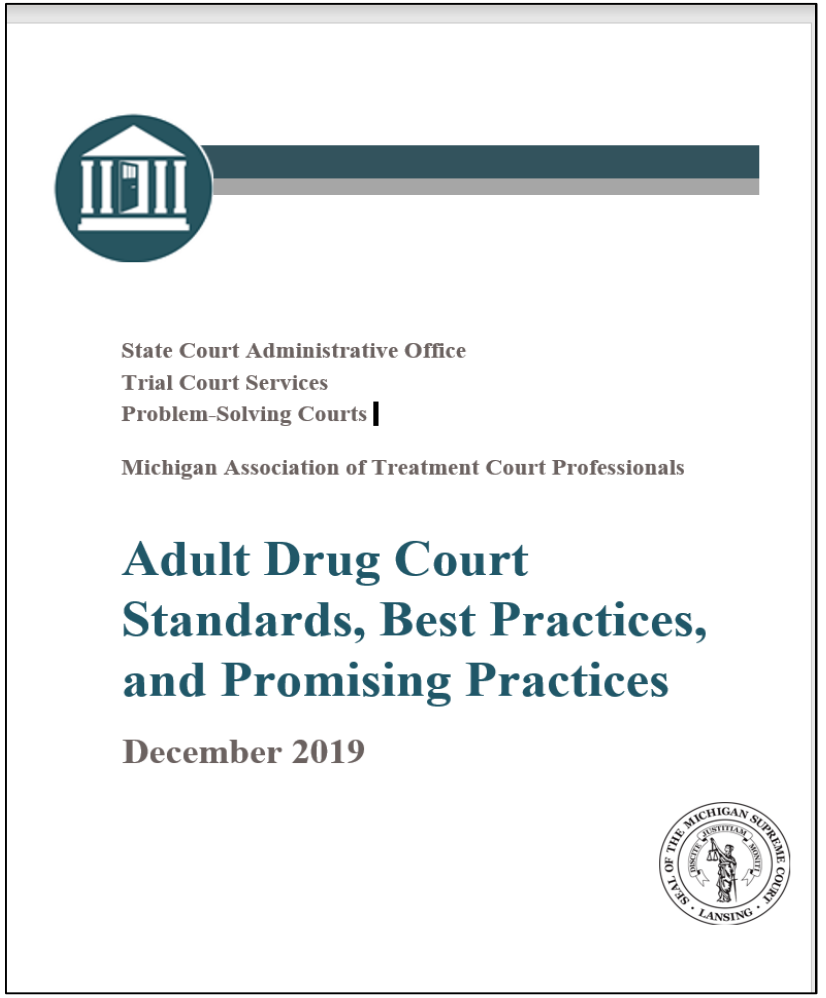
A "New Way" of Doing Court Business

- ✓Partner with Treatment
- ✓Treatment Issues
- ✓Shared Goal of Recovery
- ✓Non-adversarial/Team
- ✓Staffing Hearing – Team Discussions
- ✓Transform Roles
- ✓Communication
- ✓Status Review Hearing
- ✓Sanctions and Incentives
- ✓Immediate Responses

Opens the door to
Legal and Ethical Concerns
i.e. Sharing PHI

Required Best Practices Chapter 3 Confidentiality

1. Teams KNOW Confidentiality Law
2. Confidentiality Records are Protected
3. Maintain WRITTEN Policies on Confidentiality
4. Maintain MOU's on Confidentiality for ALL Team Members
5. Electronic Records Protected (Security Walls/Passwords)
6. Staffings – if open – Proper Consent Obtained.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Adult Drug Court Standards, Best Practices, and Promising Practices
December 2019

Stigma

- **Purpose of the Law of Confidentiality -** To ensure that people living with substance use disorders (SUD) are not made more vulnerable to negative consequences as a result of seeking treatment.
- **Disclosure:** Severe negative consequences and discrimination
  - ✓Criminal investigation, arrest, prosecution by law enforcement and incarceration.
  - ✓Loss of employment, housing, and child custody
  - ✓Loss of housing
  - ✓Loss of child custody
  - ✓Denials of disability, life, and other types of insurance
  - ✓Personal reasons: Right to privacy

Stigma: Conflating the Disease and the Person

Example: Covid-19 - Stigma arises when the virus and the person with the virus are conflated; when we change the question from what's to blame to who's to blame.

- Twenty-plus years of research have shown that the stigma of mental and physical illnesses extended to people with these illnesses can be as harmful as the symptoms themselves.
- "Concerns about confidentiality continue to be one of patients' greatest **barriers to entering treatment**, even with Part 2's heightened privacy protections." SAMHSA

Three harms of Stigma:

1. **Public** – Harm that results when people endorse stereotypes about individuals with addiction ("they're tainted") leading to discrimination.
2. **Personal** – Self-stigma: the disrespect that results when people associated with addiction internalize stereotypes and feel tainted or dirty.
3. **Labeling** - People will try to avoid the label by avoiding health-related experiences.

Trust

A participant's willingness to obey a court's order is linked to his or her perception of the court's legitimacy. The 'Power' of the four principles of **procedural fairness**.

- **Voice** – Engaging the participant in the process.
- **Neutrality** – Fair and balanced between both sides.
- **Respectful Treatment** – The 'perception' of fairness
- **Trustworthy** – Sincerely trying to help the participants

Why important to drug court team?

Confidentiality Promotes Trust;

Trust Promotes Recovery

Confidentiality Laws

Federal Law: HIPAA & 42 CFR, part 2

- HIPAA – The privacy of 'health-related' information
- 42 CFR, part 2 – The privacy of substance abuse records

State Law: Michigan Statutes

- Many Confidentiality Statutes
- Michigan Drug Court Statute

Federal Law prevails if in conflict with State Law 'Unless' the State Law is More Restrictive

HIPAA - Health Insurance Portability & Accountability Act

- **HIPAA** creates uniform, nationwide standards for maintaining the privacy of many types of health-related information.
- **HIPAA** protects confidentiality and security of patient information.
- To comply with **HIPAA's** Privacy Rule, Michigan's health professionals must reconcile their legal obligations under HIPAA with Michigan statutes regulating the disclosure, use, or reporting of confidential health care information. (Conflict of Laws)
- **General Rule:** If DWI Court is in compliance with 42 CFR- it is in HIPAA compliance also (with few exceptions)

42 CFR part 2:
A Federal Regulation that:

- Protects patient privacy by regulating the way that patient substance use disorder information can be shared and disclosed.
- Limits the availability of substance abuse records to ensure that individuals in a treatment program are not more vulnerable with respect to their privacy than those who do not seek treatment.
- **Note**: Important Distinctions between HIPAA and 42 CFR:
  1. The privacy protections for patient records in criminal and civil legal proceedings.
  2. HIPAA generally is less protective of patient privacy than 42 CFR, i.e. HIPAA permits disclosures *without patient consent* for "treatment, payment, or healthcare operations,
  3. Attempt is to bring 42 CFR part 2 more in line with HIPAA. (Changes effective August 14, 2020; Rules NOT yet)

Does 42 CFR, Part 2 Apply to Treatment Courts?

The 42 CFR General Rule applies to:

- Screening
- Assessments
- Referrals
- Treatment
- Diagnosis

Does your treatment court Do?

YES!

Are we a <u>Treatment Program</u> for the purposes of the confidentiality regulations?

42 CFR, Part 2 And Treatment Courts

Application of 42 CFR, part 2 to the Problem-Solving Court

- Important: Does not prohibit the DTC Team from sharing SUD information, rather

- Confidentiality statutes control how and under what circumstances SUD information may be disclosed.

"Adult drug courts are philosophically, functionally, and intentionally different from ordinary criminal courts." State v. Sykes, 339 P. 3d 972, WASH. S.Ct. 2014

What is Confidential Information?

42 CFR, Part 2: *"The restrictions on disclosure in these regulations apply to any information, whether or not recorded, which:*

(i) Would identify a patient as an alcohol or drug abuser either directly, by reference to other publicly available information, or through verification of such an identification by another person,

(ii) Is drug abuse information obtained by a federally assisted drug abuse program …. for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment."

Protected Health Information (PHI)

Question:
Are Drug/Alcohol Test Results Protected?

YES!

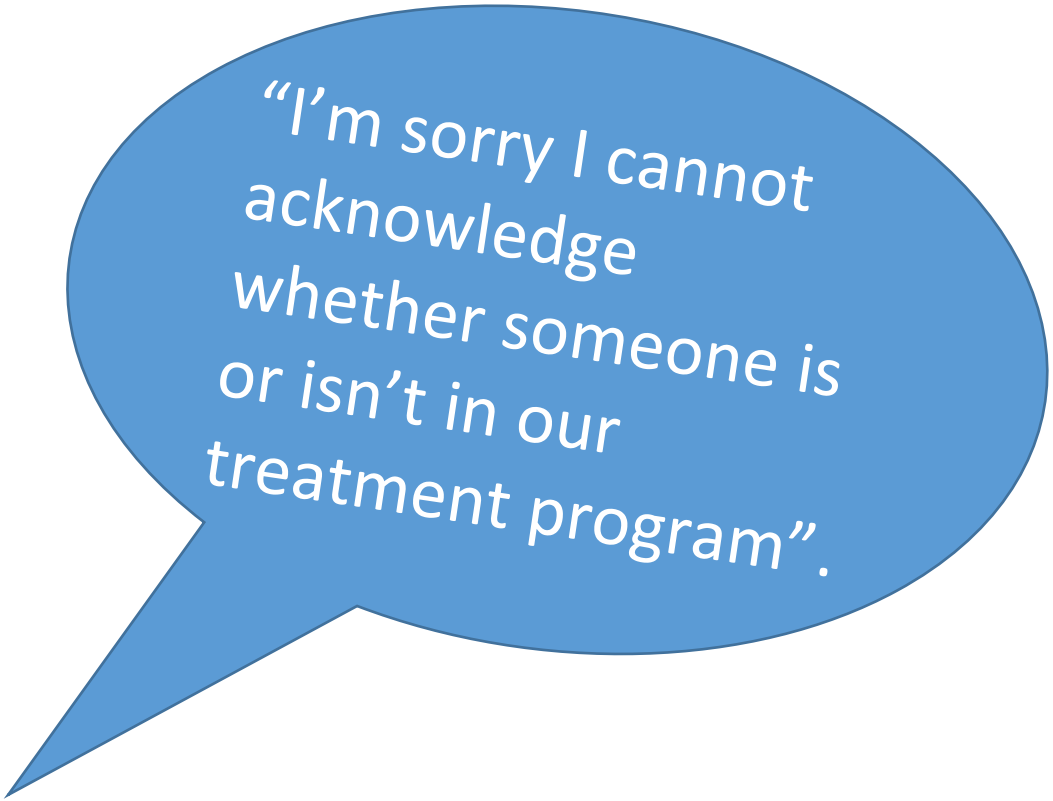
Treatment information

- Screening
- Assessments
- Referrals
- Treatment
- Diagnosis and prognosis

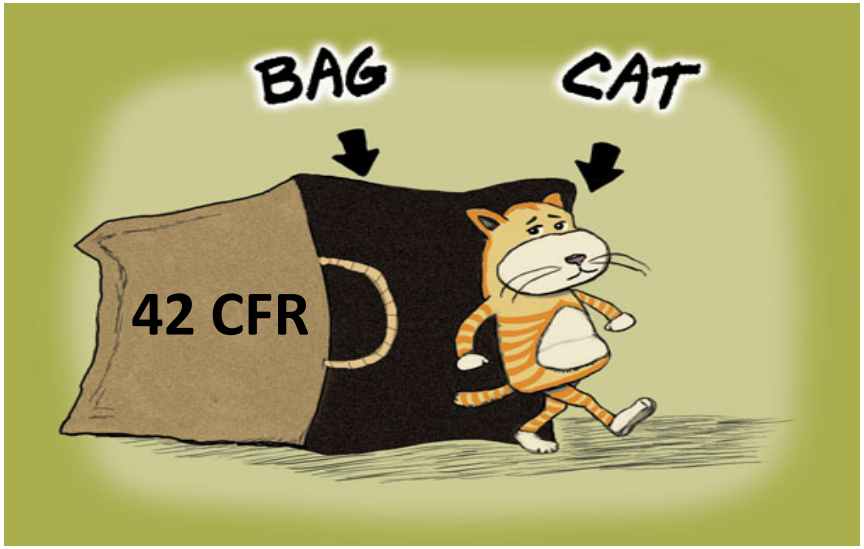
Protected Health Information (PHI)

Identity

Question:
You are asked if someone is in your DTC?



Not Just Disclosure But Also Re-Disclosure



- Disclosures of Part 2-protected information must be accompanied by a notice prohibiting redisclosure.
- Same Rules Apply As The Original Disclosure.*
- Exception 42 CFR, part 2, section 2.35. "An individual in CJS used to carry out official duties…"
- * Recent changes (August 2020, rules not yet promulgated)

The Problem-Solving Court Model

The Sharing of Information: When and Where Does Confidentiality Matter?

All the time:

- Team member discussions
- At Staffings
- At Status Review Hearings
- Protection survives death

Question?

How do we share information in staffing or with the team and yet comply with state and federal confidentiality laws?

Consent

Consent – Why Required?

- Patients in SUD treatment should retain the right to consent when and to whom their records are disclosed.
- Treatment Programs may only release information or records:
  - ✓With a knowing and **written consent** from the participant
  - ✓A proper consent authorizes all team members to share information, if others involved in the PSC, must obtain consent.
  - ✓Some limited exceptions

Elements of a Consent

The Consent Sets Limits

- Who may make the disclosure
- To whom disclosure may be made
- Participant's name
- Purpose of the disclosure
- What kind of information may be disclosed
- Participant's signature
- Written and Dated
- Limited in Time
- (Consent cannot be revoked in a Criminal Court setting)

Question?

How does one INSURE a ‘voluntary’ and ‘informed’ consent from the participant?

- ✓ Is there a right to have a lawyer present?
- ✓ Interpreter?
- ✓ Alcohol/drug free?

Recommendation: Add to Consent

“Participant acknowledges <u>open</u> Court Room, <u>closed</u> staffings and waiver of right to be present in staffing.”*

Consent

Note: Distinction between HIPPA and 42 CFR, part 2

- HIPAA prohibits a program from conditioning treatment on a patient signing a consent.
- Judges, probation etc. **can** condition participation in the DWI Court program on an offender signing the consent form

Consent

HIPAA Order – Include 'Administrative Order' In Your Consent

- HIPAA requires that all consents be made revocable.
- Although HIPAA does not apply to courts it does apply to the treatment provider. Therefore, the court should issue an 'administrative order' requiring that treatment providers disclose relevant treatment information to the drug treatment court team.
- Example: Participant withdraws consent from treatment (can't criminal court) the order allows treatment to disclose information to the court.
- The consent form signed by the participant should reflect HIPAA requirements. (**Example of forms:** The Drug Court Judicial Benchbook; NDCI; Michigan SCAO, Problem-Solving Div.)

Client Notice Form

- A second form required by HIPPA/42 CFR <u>in addition to the Consent form.</u>

IF YOU DON'T SPEAK ENGLISH AND YOU NEED HELP FROM THE GOVERNMENT:
YOU HAVE THE RIGHT TO A FREE INTERPRETER.
YOU DON'T NEED TO BRING SOMEONE WITH YOU.
YOU SHOULD NEVER BE TURNED AWAY.
IT'S YOUR RIGHT!
YOU HAVE THE RIGHT TO AN INTERPRETER AT:
CITY AGENCIES
STATE AGENCIES

I. Participants must be informed of privacy rights in writing and given to the Participant to keep.

II. Name and # to call if violation

Permitted Disclosures
No Consent

Even without written consent under what other circumstances may you release information?

- Medical emergency
- Crimes on the premises
- Crimes against staff
- Administration / qualified service programs working with drug court
- Outside auditors, central registries and researchers
- No re-disclosures unless permitted (Montana v Plouffe)

Mandatory Disclosure
No Consent

- State child abuse laws
- State laws relating to cause of death
- Duty to protect others, to warn of imminent, serious harm

Sharing Information - Exceptions to Consent

FBI
SPECIAL AGENT
SIGNATURE
THIS IDENTIFICATION BADGE IS INTENDED FOR USE ONLY BY EMPLOYEES OF THE FEDERAL BUREAU OF INVESTIGATION

- 42 CFR recognizes the sensitivity of SUD patient records by requiring a special court order before turning over patient records in response to a subpoena, search warrant, or law enforcement request. 42 CFR §§ 2.61-2.67.

Badge?
Subpoena?
Search Warrant?

Tip: Take it to the Judge

Staffings & Confidentiality

- Discretionary with the team
- Not a Violation of 'Open Courts' per Constitution (Sykes, infra)
- Should be added to consent
- Defense Counsel should be present.
- Def. right to be at every critical stage of the proceeding. State of Washington v Leclech, #70168-1-I unpub'd 06/15/15)

- Discretionary with the team.
- Policies should include who may be allowed to attend a staffing if allowed by the treatment court team; participants, interested organizations? Waivers?
- Add to your consent form so participant knows

No final decisions concerning disputed facts or legal issues in the case. (The Participant has a right to be heard)

Status Review Sessions
Courtroom: Closed or Open

Open!

- Article 1, § 20 of the 1963 Michigan Constitution.
- MCL 600.1420. The sittings of every court within this state **shall be public.**
- Caselaw: *"[T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure."'"* (People v Vaughn, 491 Mich 642 (2012) citing Presley, v Georgia, 558 US at 214, quoting Waller v Georgia, 467 US 39, 48 (1984)

Standard of Minimization

Open!

Standard of Minimization

Despite the high level of protection afforded to information regarding substance abuse treatment by the Confidentiality Law:

1. DTC team can obtain the level of information they need to determine if participants are complying with drug court program criteria.
2. Information identifying the clients or any information regarding client treatment, including information shared at team meetings, should only be shared pursuant to 42 CFR part 2, 45 CFR parts 160 and 164, Section 290dd-2, and MCL 300.1748, and **only to the degree it is necessary for the recipient of the information to perform his or her role**;

Example: Open and public courtroom trumps federal confidentiality requirements. State of Florida v Noelle Bush, infra.

Status Review Hearing
Four Court Scenarios

1. **Regular Status Review Hearings:** Confidential information can and should be avoided. (i.e, NO discussion of treatment)
2. **Regular Status Review Hearing with 'uncontested' violation and court orders a sanction**. Confidential information should be avoided. Both violation and sanction can be addressed without reference to protected health information.

   Tip: Written waiver of hearing and rights and admission of violation. Violation referred to in 'general terms' (i.e. probation violation, missed counseling appointment, missed obligation of probation agreement, violation as discussed with your probation officer.)
3. **Treatment Court Violation – Contested Hearing**. Confidential information **may** be discussed per 42 CFR, part 2, if meets the requirements of 2.35 and the Standard of Minimization.
4. **Treatment Court Termination Hearing**. Confidential information **may** be re-disclosed per 42 CFR, part 2, if meets requirements of section 2.35 and the Standard of Minimization.

Violation 42 CFR and Due Process 5th Amendment

Police/Prosecution Use of Confidential Treatment Court Information:

State of Montana v. Plouffe, 329 P3d 1255 (2014)

- **Facts:** Shared drug test results with non-team law enforcement.
- **Issue:** Was Plouffe's constitutional right against compelled self-incrimination (5th A.) violated by the State's use of confidential Treatment Court material?
- **Holding:** The State (P.O.) violated (DTC statute) by disclosing confidential drug testing information to law enforcement in order to investigate a new crime.
- **A footnote admonishment:** ***"in order to protect the integrity of the treatment court process****, guidelines must be in place which guard against unauthorized disclosure of confidential material. To the extent such guidelines are absent or perhaps unobserved by the (DTC) we suggest that the Treatment Team reacquaint themselves with these principles."*

(Citing NADCP Drug Court Standards; BJA)

Confidentiality Resources

MOU'S
Signed by ALL Team Members

Michigan Supreme Court
State Court Administrative Office
Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
Phone (517) 373-4835

Jennifer Warner
Director

DATE:
FROM:
Problem-Solving Courts Manager

Conducting Remote Problem-Solving Court Hearings

Problem-solving courts (PSC) provide critical services to a very vulnerable population. Consequently, it is important to maintain structure when there is not physical access to the court. Regular review hearings and staffing meetings are key to maintaining that structure. Technology enables courts to conduct both remotely, while ensuring public access to the appropriate

Problem-Solving Court Manager
RE: Remote Court Hearings
MEMO

- Model Confidentiality Policy and Procedure Regulating and Controlling Access to and Use of Written and Electronic Confidential Records
- Model Memorandum of Understanding Regarding Confidentiality
- Model Multi-Party Consent to Release Information
- Model Staffing Visitor Confidentiality Agreement and Participant Consent to Release Information
- Model Team Member Confidentiality Agreement

Operational Checklist

- ✓ Secure room and/or locked file cabinet: Keep separate
- ✓ No public access
- ✓ Label drug court files “confidential”
- ✓ Written procedure for Access and Use and for Data Storage
- ✓ Educate courthouse staff

- ✓Forms for Disclosure Consent
- ✓Form for Client Notice
- ✓Form for Qualified Service Provider
- ✓MOU on Confidentiality - Signed by ALL team Members (Remember new Members) and review it annually!
- ✓Written consent and notice form for DWI Court visitors and observers

Operational Checklist: Computerized records

- ✓Password-protected records
- ✓Consult computer specialist
- ✓Limit access to records even further after consent expires or is revoked
- ✓Seal by changing the password

Tips: Confidentiality and Sharing Information

- ✓ **Federal and State Confidentiality Laws must be built into the daily operations of the drug court.**
- ✓ **Review and update Policies and Procedures Manual**
- ✓ **Designate a 'Team Confidentiality Expert'**

Due Process & The Constitution

"Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise." In Re Gault (1967)

"…the repository of 'due process'…the courts."

People v Jackson, 63 Mich App 246 (1975)

"How Treatment Court's Make Decisions Has Confidentiality Law and Due Process Implications."

Washington v Sykes, *infra* (2014)

A Problem-Solving Court is a Court of Law

MCL 600.1060(c) "Drug treatment court" *means a court supervised treatment program for individuals who abuse or are dependent upon any controlled substance or alcohol. A drug treatment court* ***shall comply*** *with the* ***10 key components*** *promulgated by the national association of drug court professionals.*

✓" A drug court "is a **court function**, clearly laid out as an alternative sentencing program under the applicable statutes."

Commonwealth v Nicely, Ky Sup Ct, *infra* (2010)

✓The federal and state guarantees of due process apply to sentencing proceedings. See Morrissey v. Brewer, *infra* (1972)

NADCP…*10 Key Components…*

Key Component #2 of Drug Courts

- *"Use of a nonadversarial approach by prosecution and defense that promotes public safety while **protecting any participant's due process rights**."*

"How well drug courts accomplish their goals depends upon how faithfully they adhere to the 10 key components." Carey, NPR Research

KEY: A Conflict can change a *nonadversarial* approach to an *adversary* proceeding which increases the emphasis on Due Process safeguards. Once resolved, it can change back to a *nonadversary* approach.

Certification

State Court Administrative Office
Trial Court Services
Problem-Solving Courts

Michigan Association of Treatment Court Professionals

Adult Drug Court Standards, Best Practices, and Promising Practices

December 2019

Due Process

Participants Have Rights?

The Traditional American View of Privacy:
"The Right to Be Left Alone"

- Probation diminishes a probationer's reasonable expectation of privacy. No Absolute Liberty; rather probationer's have a Conditional Liberty.

Griffin v Wisconsin, Wisc Sup Ct, *infra* (1987)

A Participants' consent to participate in Drug Court **is not a blanket waiver of their due process rights**, nor a means to insulate the program altogether from constitutional scrutiny.

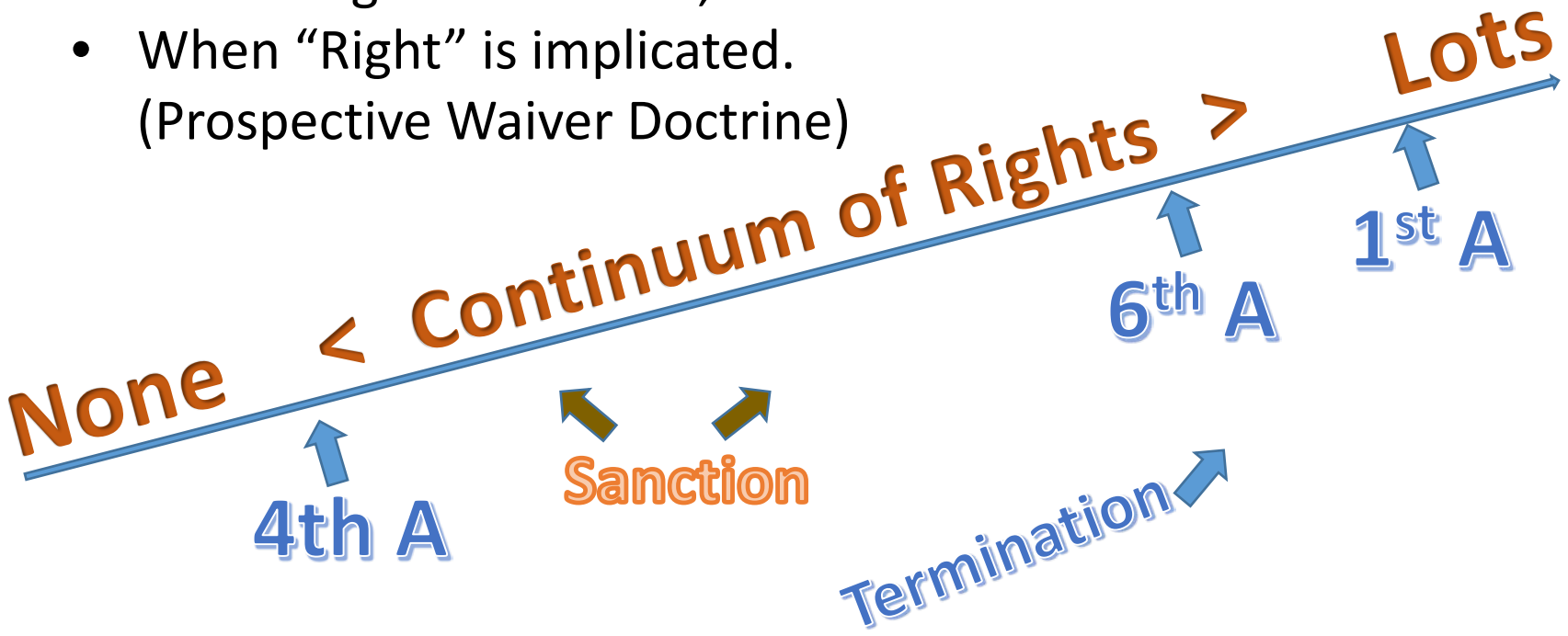
Brookman and Carnes v State of Maryland, *infra* (2016)

A Participant's Rights

The standard for intruding on rights of a participant depends on the "private interest' that will be affected.

It will vary - Depending on:

- What "Right" is at issue, and
- When "Right" is implicated. (Prospective Waiver Doctrine)



Equal Protection Challenges

- Participant - Constitutional Right to be admitted into a Problem-Solving Court? Right to Refuse? Absence of a DTC?

  (See Right to refuse probation (People v Bensch, MI Sup Ct, *infra*, Nov 15, 2019)

Discretionary entry or exclusion into P.S. Ct. - depends on:

Suspect class or fundamental right – test: strict scrutiny

Semi-suspect class / liberty interest – test: intermediate scrutiny

No suspect class – test: rational relationship to legitimate governmental interest

- The admission or exclusion of a defendant from a drug court program is analyzed under the rational basis equal protection test. (Issues: Indigency; serious physical/mental health/Disability: Change Test?)
- **TIP:** Make a fact-specific record.

Gatekeeper: Each Treatment Court shall… (MCl 600.1060(1)

Determine whether an "individual" may be admitted to the DTC.

- A final sentencing decision is made, within the parameters of the law, by the judge. Individualized sentencing *vis-a-vis* blanket prohibition.
- Memorandum of Understanding (MOU). Serves as Guidance (Best Practices) Not Regulation. People v Rydzewski, MI Ct App, *infra* (2020)
- It is within trial court's discretion to sentence defendant to participate in Mental Health Court despite prosecutor objection and lack of consent. Rydzewski, infra.
- In Rydzewski, the court distinguished *People* v *Baldes* where Court held that "courts may not admit a defendant into a drug treatment program when doing so departs from the sentencing guidelines and the prosecution does not approve." People v Baldes, *infra* (2015)
- TIP: Make your MOU Clear, consider the statutory language governing admission for your type of treatment court.

A ban on 'lawful use' of MM as a condition of probation is not lawful.
People v Thue, Mi Ct of App, Feb 11, 2021

- The lawful use of marijuana under the MMMA supersedes the Michigan probation act for conditions of probation in conflict with the MMMA. A ban on lawful use of MM as a condition of probation is not lawful.
- Banning legal use of MM also has D.P. implications/ADA.
- The Michigan DTC Statute requires: "(d) A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders.

  MCL 600.1064 (3)(d)
- A problem-solving court should initiate fact-specific hearings to resolve disputes concerning the eligibility requirements for participants; including efforts to determine the legitimacy of the use of MM by a DTC participant.

The goal of a treatment court: A reduction in recidivism, a crime-free future for individuals that improves public safety for the community.
Question: Can T. Ct. accomplish its goals with legally qualified medical marijuana users in the treatment court program?

First Amendment and AA/NA

It is "Establishment of Religion" to order participant to AA/NA. Well settled. Fundamental/CANNOT order as condition of probation (Warner), parole (Inouye).

VIP: There are certain fundamental rights that cannot be 'contracted' away!

"Secular" alternatives

Provide alternatives; self-help programs that are not premised on monotheistic deity:

- Smart Recovery
- Rational Recovery
- LifeRing Secular Recovery
- Secular Organization for Recovery (SOS)
- Lenaire Technique
- Agnostic AA
- (Internet AA)

First Amendment Association Restrictions

Test: Reasonableness

- No contact: Felons/Drug Dealers/Persons of 'disreputable character.'
- No contact with children: "The government tells us that associational restrictions like this one (Not to be with children) do not prohibit incidental or unintentional contact with minors. That observation finds support in our survey of the case law." U.S. v. Burroughs, D.C. Cir. *Infra* (2010)
- No use of the Internet: "That an offense is sometimes committed with the help of a computer does not mean that the district court can restrict the Internet access of anyone convicted of that offense." Burroughs, *supra*
- "I simply don't care." No internet/computer. The trial court did not offer any justification for the restriction on the record, let alone any analysis suggesting that the restriction was tailored to this defendant's offense and rehabilitation.

People v Swales, MI Ct App, *infra* (2019)

First Amendment and Area/Time Restrictions

Place and area restrictions – "Reasonable" when narrowly drawn, considerations:

1. Whether the defendant has a compelling need to go through/to the area;
2. Is there a mechanism for supervised entry into the area;
3. The geographic size of the area restricted, and
4. The relatedness between the restriction and the rehabilitation needs of the offender.

See People v. Rizzo, *infra*; and also State v. Klie, *infra.* (supporting a prohibition against entering Waikiki area)

Curfew: "Any 'rehabilitative effect'?" P v Peterson, Mich App (1975)

Editorial Comment: Justice Reform, eliminate unnecessary conditions of probation

U.S. 4th Amendment Case Law and Probationers

- ✓A **search** occurs when a reasonable expectation of privacy is infringed. Probation diminishes a probationer's reasonable expectation of privacy, permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large. U.S. v Knights, *infra.*
- ✓The U.S. Sup. Ct. created a 'special needs' exception for searching probationer's and parolee's residences. Wis. v. Griffin, *supra*.
- ✓**Reasonable suspicion:** "…is merely a particularized and objective basis for suspecting criminal activity." *Tucker*, *infra*. Although an officer must have "`some minimal level of objective justification,' the justification is less than that requirement for a showing of probable cause. INS v. Delgado, U.S. Sup. Ct., *infra* (1984).

"The Michigan Constitution…is generally construed to provide the same protection as the Fourth Amendment of the United States Constitution." People v Levine, *infra* (1999)

Michigan - 4th Amendment Caselaw and Probationers

People v Hellenthal, *infra.(1990)*: The search of probationer's residence without a warrant:

> "….we believe the waiver of one's constitutional protections against unreasonable searches and seizures may properly be made a condition of a probation order where the waiver is reasonably tailored to a defendant's rehabilitation." See P v Glenn-Powers, *infra*; P v McClure, *infra*.

People v Krusell, *infra*.(2012) "…the terms of defendant's probation prohibited him from using or possessing any controlled substance or drug paraphernalia. Defendant agreed to consent to a warrantless search if his probation officer had "reasonable cause" to believe that defendant was in possession of items that violated his probation.

- "….pursuant to the "special needs" exception (to 4th A. warrant requirement) the search of defendant's residence per the probation order was reasonable…"
- The 'reasonable cause' standard in Judicial probation order AKIN to * Griffin's Legislative 'reasonable grounds standard.'

4th Amendment - Supervision

Home Visit:

- **Not a Search**
- **No Reasonable Suspicion**

Probation Search:
Reasonable Suspicion

Probation officer has been regarded as "the court's `eyes and ears.'

"We hold that because home visits "at any time" are conducted pursuant to a court-imposed condition of federal supervised release of which the supervisee is aware, and because a home visit is far less intrusive than a probation search, probation officers conducting a home visit are not subject to the reasonable suspicion standard applicable to probation searches under Knights. US v. Reyes, *infra*.

Tip: Explain home visit/search rules in DTC Agreement.

4th Amendment Participant Understanding

Sample Treatment Court Agreements: 4th A. Privacy Rights

- "I further understand that I must report to my probation officer and that my probation officer or a court surveillance officer may make unscheduled **home visits**. Further, I understand that I may be subject to search and seizure as a participant in the Sobriety Court Program based on reasonable cause and without the requirement of probable cause of a search warrant."
- "I understand that drug treatment court staff may make unscheduled **home visits**, and I will allow drug treatment court team members, together with law enforcement officials if accompanied, into my home at any time for supervision or compliance reasons."

(trialcourtservices@courts.mi.gov)

Tip: Court surveillance home visit has same license as any visitor.

"…generally managed without incident by the nation's girl scouts and trick-or-treaters." (Justice Scalia) (Forida v Jardines; *infra*, Brennan v Dawson, 6th Circ, Ct of Apps, *infra* (2018)

Home Visit to 'Reasonable Suspicion"

TIP: What if See Contraband - 'Policy in Writing'

Search and seizure *policy* for probation officers established by the United States District Court for the Northern District of New York:

When contraband is observed within the "plain view" of a probation officer during ... [a] home visit ..., such contraband may be seized *only* if in the officer's judgment, it would present an immediate danger to the officer or the community. In consideration of officer safety, *the preferred and more prudent* action would be for the officer to leave the premises and immediately notify (by cellular phone, if necessary) a supervisor of his observations. The officer will then notify the appropriate law enforcement agency as directed by the supervisor.

Note: The law permits cooperation with police as long as the probation officers are pursuing <u>legitimate probation-related objectives</u>. (i.e. No Stalking Horse) But, appropriate, for law enforcement to be 'on the scene.'

4th Amendment Issues

Parolee and probationer searches are an example of the rare instance in which the contours of a federal constitutional right are determined, in part, by the content of state law.

- Term of Probation: Home Visit v Search of Participant's Residence ? (Liability for violation of 4th Amendment)
- What is the curtilage of the home?
- Search: For probation compliance or law enforcement investigation. Home visit – probation accompanied by police?
- A signed treatment court agreement is not wholesale consent?
- Search of cell phone by probation officer.
- Continuum: Expectation of Privacy - Probation v Parole.
- Technology – Replace 'Exceptions' to the S.W. requirement?
- When in doubt – Get a 'Warrant.'

5th A: Is 'No Use of Drugs' a Legal Requirement of PS Ct

- "…based on the evidence presented at the violation hearing, the judge did not err in concluding that the defendant violated the drug free condition of her probation by testing positive for fentanyl." Eldred, infra.
- The conditions of her DTC probation directly addressed and were tailored to the defendant's personal characteristics and her crime.
- The conditions furthered the rehabilitative goal of probation by facilitating treatment for the defendant's drug addiction, and
- Furthered the goal of protecting the public because each condition addressed the fact that the defendant's drug use motivated her to commit the crime.

"We further conclude that the actions of the District Court judge and the probation department involved in this case were exemplary. They embodied the **flexibility, sensitivity, and thoughtfulness** in furtherance of the overarching goal of probation -- to rehabilitate rather than incarcerate whenever possible, while fulfilling their duty to protect the public."

Due Process and Termination

- Once a State has granted prisoners a liberty interest, (analogy DTC) we held that due process protections are necessary "to insure that the state-created right is not arbitrarily abrogated."

  Vitek v Jones, *infra* (1980)

- "…if the State grants a prisoner a right or expectation that adverse action will not be taken against him except upon the occurrence of specified behavior. Vitek, *supra.*

  "the determination of whether such behavior has occurred becomes critical, and the minimum requirements of procedural due process appropriate for the circumstances must be observed." *Wolff v. McDonnell, infra* (1974)

Treatment Court Termination

NADCP and Michigan Standards and Best Practices

The consequences of termination from drug court are comparable to those sustained in a probation revocation.

Michigan Courts: "Due process requires only that the revocation proceedings be conducted in a fundamentally fair manner." People v Belanger, Mich App *infra* (1998); i.e. "minimum requirements of due process" Gagnon v Scarpelli, infra.

Probation Violation: Trial court failed to advise defendant of his rights required by MCR 6.445(B) or conduct a hearing per MCR 6.445(E) therefore trial court 'lacked the authority' to sentence the defendant. People v France, Mi Ct of App, unpub'd, *infra* (2019)

Problem-Solving Court Termination Hearing

Participant Due Process Rights

1. Written notice of the claimed violations.
2. Right to a Hearing and to be heard.
3. Right to disclosure of evidence against him or her.
4. Right to cross-exam and confront witnesses
5. Standard of proof: Preponderance of the evidence.
6. Right to a record of the proceedings
7. Right to a 'neutral and detached' hearing body.
8. Right to an attorney, and if indigent, a court-appointed attorney (if waived, must re-advised at each subsequent proceeding)

Right to a Procedure: Factual determination that Participant is Guilty of violating probation and determination of whether the violation warrants revocation.

Violation of Agreement and Termination?

A probationer has the right to a procedure comprised of: A factual determination that he or she is in fact guilty of violating probation; and a **discretionary determination** of whether the violation warrants revocation. Pillar, *infra*.

- ✓ Individualize & understand the human condition/human nature.
- ✓ Use of controlled substances: Consider research on relapse. Do other medical conditions relapse. Smoking. Diabetes. Cancer.
- ✓ Understand the brain and addiction. Physical changes.
- ✓ Treatment failures - do you evaluate other treatment resources, plan? Who makes Criminal Justice decision?
- ✓ Utilize the experience/best practices of treatment courts.
- ✓ Medication Assistance Treatment/utilized for best result.

Due Process and Sanctions

How Much Due Process Applies to Sanctions?
It Depends!

Peace

Non-Adversarial

Conflict

Adversarial

1st Question: Is there a Contest or is it a matter of mitigation?

Due Process and Sanctions

2nd Question: If There is a Contest will there be a Loss of a 'recognized' Liberty Interest?

Answer: It depends on the proposed sanction. Certain types of 'Loss of Liberty' are 'recognized' and some not.

Case Law: Loss to a recognized liberty or property right under the 14th Amendment? *Gagnon v. Scarpelli, infra; Wolff v. McDonnell, infra; Sandlin v. Conner, infra;* A sanction proceeding is analogous to the amendment of a traditional probation order under Michigan Law.

Due Process and Sanction Summary

Right to a Hearing

- If there is a factual challenge to a violation (contest) and,
- liberty interest at stake

However:

- Hearing may be informal, where
- Participant has a right to be heard and the evidence challenged.

No Right to a Hearing

- If there is a factual challenge to a violation but
- There is NO liberty interest at stake

Or

- There is no factual dispute as to the violation but participant wishes to express a reason for mitigation

Two Important Notes: (1) A Participant may 'Waive' hearing and rights and admit violation, and (2) a Treatment Court may grant a participant a hearing even when NOT required.

Hearing

Full panoply of Constitutional Rights

***Summary, Informal and Flexible**

*Type of hearing – Summary and informal MCl 771.4 (written notice and hearing) See People v Pillar, Mich App, *infra* (1998)

Case Law: Sanction Hearing

Brookman v State of Maryland, *infra* (2018)

Facts Brookman:

Violated for 2nd Dilute. Requested a hearing. Hearing held, with counsel, but denied right to challenge evidence. Jail imposed.

Holding: Due Process Violation.

Reason: Reversed. "…the hearings weren't adversarial. To the contrary, Ms. Brookman sought an opportunity to dispute the results of her urine tests and sought a continuance so that she could obtain an expert and analyze the results. Court refused. The court took the State's allegations not only at face value, but as a *fait accompli,* and denied her any opportunity to review or challenge the results before imposing jail."

*Appellate Court noted the sanction involved a liberty interest.

Carnes v State of Maryland*

Facts Carnes: Violated for missed test. Requested hearing; opportunity to explain.

Holding: Violation of Due Process.

Reason: Participant was denied a hearing. Trial court rejected the proposition that the menu of sanctions be considered guidelines and imposed sanction as 'mandatory' from the menu.

The judge failed to "individualize" sentence. Note: team voted for use of 'discretion.'

*190 A3d 282 (2018)

Due Process
Right to an Attorney

The protections applicable in Michigan probation revocation proceedings, including the right to counsel,

"far exceed…federal constitutional requirements."

People v Jackson (Leroy), Mich App, *infra* (1975).

- "Even [if] a probationer charged with probation violation has waived the assistance of a lawyer, at each subsequent proceeding the court must comply with the advice and waiver procedure in MCR 6.005(E)." MCR 6.445(D).
- Counsel (**Attorney**) is needed to present to the court extenuating facts, explain conduct, correct errors in reports of defendants' past conduct, and appeal to the equity of the court. People v Dye, *infra* (1967).

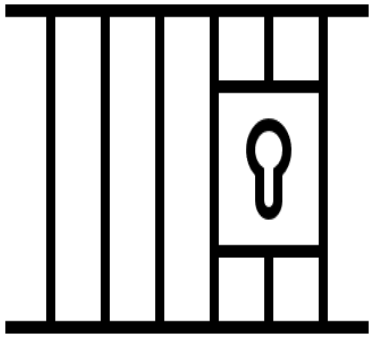
Medication Assisted Treatment Michigan Best Practices

- Allow use of MAT when appropriate, based on a case-specific determination and handle MAT very similarly to other kinds of treatment. Blanket denial of MAT violation of ADA, 4th & 8th A's.
- Courts should engage in a fact-sensitive inquiry in each case to determine whether to permit the use of MAT.
- A valid prescription for such medications should not serve as a blanket exclusion from entry into a drug court (or probation).

What are 'case-specific' questions: Is it a legally valid prescription for an addiction or psychiatric medication? (i.e. versus pain medication?) Was it prescribed and is it being monitored by a physician with specialized training in addiction psychiatry, addiction medicine, or a related medical specialty? (versus a 'pill-mill?') How is it being 'monitored?' Blood tests, pill counts?

Due Process
Preventive Detention

- 42 USC §1983 damages and injunctive relief suit against Drug Court Judge and team for incarcerating participants for lengthy periods of time, while awaiting placement in drug treatment facilities. Plaintiffs allege that the decision to hold them in jail pending placement was made without counsel, hearing, consideration of bond, or other rights of due process. (Judge forced to Resign 4/22/16) Hoffman v. Jacobi (S.D. Ind., *infra* 9/29/2015)
- Analogy: MCR 6.445(C) Hearing within 14 days or release of probationer.



Judicial or Team Impartiality - Recusal

Facts: The effectiveness of the court often depends upon the judge's personal involvement and the use of judicial authority to change the behavior of the litigants.

Issue: Does the judge's intense and personal involvement affect issues of impartiality? Or, team member?

"Would the facts, as asserted, lead an objective reasonable observer to question the judge's impartiality?"

U.S v. Ayala, 1st Cir. *Infra* (2002)

Hypothetical: Does the Judge have personal knowledge of facts that are in dispute in the proceeding?

Tip: Have participant sign waiver - No objection to treatment court judge proceeding with the case.

Due Process Ethical Violations

PERFORMANCE COMMISSION ON JUDICIAL ETHICS v. RICKEY W. THOMPSON

THE SUPREME COURT OF MISSISSIPPI, *infra* (2014)

"Judge Thompson's conduct of depriving participants in drug court of their due-process rights when he signed orders of contempt without the persons being properly notified of the charge of contempt or a right to a hearing, and by conducting "hearings" immediately after "staffing meetings" without adequate time for the persons to have proper counsel or evidence presented, violated Canons 1, 2A, 3B(1), 3B(2), 3B(4), 3B(8), and constitutes willful misconduct in office and conduct prejudicial to the administration of justice. "

"We agree with the Commission that Judge Thompson's lack of understanding and appreciation for the basic legal principles of contempt of court and due-process safeguards cannot be overlooked."

(The Court was "Not faithful to the Law.")

Judge Makes Final Decision

"Drug Courts use a 'team' approach to provide expert advisory guidance to the drug court judge on appropriate therapeutic responses to participant progress and decisions the judge must make regarding each participant.

While the team may or may not reach consensus in terms of recommendations, it can provide valuable perspective for the judge.

Nevertheless ultimate decisions regarding each participant must be made by the drug court judge."

When?

After the Judge 'engages' The Participant.

Resources: Drug Court Judicial Leadership Initiative.
Vol 1 (American University) See State v Stewart, Tenn Ct of App, *infra* 2008.

Drug Court Resources

- The Drug Court Judicial Benchbook www.ndci.org
- Judge Bill Meyer's Webliography – List of Due Process issues in drug court related cases. www.ndcrc.org
- NADCP Adult Drug Court Best Practice Standards, Vol 1 and 2.
- Michigan Adult Drug Court Standards, Best Practices and Promising Practices. Dec 2019
- American University, Drug Court Resources
- MCL 600.1060 Michigan Drug Court statute

Due Process - Case Cites

Brookman & Carnes v Maryland, 190 A3d 282 (2018)
Commonwealth v Eldred, 480 Mass 90 (2018)
Commonwealth v Nicely, 326 SW3d 441, 444 (Ky 2010)
Fuentes v. Shevin, 407 U.S. 67 (1972).
Hanas v Inner City Christian Ourtreach, 542 F.Supp. 2d 683 (E.D. Mich 2008)
In Re Gault, 387 U.S. 1, 30 (1967)
Gagnon v. Scarpelli, 411 U.S. 778, 781-782 (1973). (probation)
Gosha v. State, Ct of App, Ind (2010)
Hoffman v Jacobin, (S. Dist Ind, 09/29/2015)
Morrissey v. Brewer, 408 U.S. 471 (1972)
Performance Commission on Judicial Ethics v. Rickey W. Thompson, The Supreme Court of Mississippi, no. 2014-jp-01309-sct
People v Baldes, 309 Mich App 651 (2015)
People v Belanger, 227 Mich App 637 (1998);
People v Bensch, Mi Sup Ct, Nov 15, 2019)
People v Dye, 6 Mich App 217, 221 (1967)
People v France, Mi. Ct of Appeals (Feb 21, 2019)
People v Jackson (Leroy), 63 Mich App 246 (1975)
People v Jackson, 63 Mich App 246 (1975)
People v Peterson, 62 Mich App 258 (1975)

Due Process Case Cites continued

People v Pillar, 233 Mich App 267 (1998)
People v. Rizzo, 362 Ill. App. 3d 444 (2005)
People v Rydzewski, Mich Ct of Appeals (Jan 23, 2020)
People v Thue, Mich Ct of Appeals (Feb 11, 2021)
People v Swales, Mich Ct of Appeals, Unpub'd (Sept 10, 2019)
State of Florida v Noelle Bush, Case #48-02 CF 6371-0 (10/15/02)
State of Washington v Adonija Lacroy Sykes, 339 P3d 972 (2014)
State v. Klie, 174 P.3d 358 (Hawaii 2007)
State v Stewart, Tenn Court of Appeals; (2008 & 2010) & 2008 WL 4467179
U.S. v. Ayala, 289 F.3d 16, 27 (1st Cir. 2002)
U.S. v. Burroughs, 613 F.3d 233 (D.C. Cir. 2010)
U.S. v. Tessier, 814 F3d 432 (6th Circ. 2016)
Vitek v Jones, 445 U.S. 480 (1980)
Wolff v. McDonnell, 418 U.S. 539, 557 (1974) overruled on other grounds
Sandlin v. Conner, 515 U.S. 472 (1995);

Cases Probation Search and Seizure

Search - United States Supreme Court:

Samson v. California, 547 U.S. 847, 847 (2006)
U.S. v. Knights, 534 U.S. 112 (2001)
Florida v Jardines, 569 U.S. 1 (2013)
Brennan v Dawson, 6th Circuit (2018)
Griffin v Wisconsin, 483 U.S. 868 (1987)
U.S. v Tucker, 305 F3d 1193 (10th Circ. 2002)

Search - Michigan:

People v Hellenthal, 186 Mich App 484 (1990)
People v Glen-Powers, Mi Ct of Appeals, May 8, 2008
*People v Johnson, 210 mich app 630,634 (1995)
People v Levine, 461 Mich 172 (1999)
People v McClure, Mich App, #317995, Jan 22, 2015
People v Krusell, Unpub'd, Mich App (2012)
Ins v Delgado, 466 U.S. 210, 217 (1984)

Search - Other States:

State v Ochoa, 792 NW2d 260 (2010);
State of Iowa v Baldon III, 829 NW2d 785 (2013)

Home Visit Cases:

U.S. v LeBlanc, 490 F3d 361 (Ct. App. 5th Circuit, 2007)
U.S. v Reyes, 283 Fed 3rd 446, 462 (2nd Circ. 2002)
U.S. v Tessier, U.S. Ct. App, 6th Circuit, 02/18/15

Contact Information:

Judge Patrick C. Bowler, ret.

(616) 644-2178

pcbowler@gmail.com

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Risk
Need
Responsivity

Criminogenic Risk

HOW LIKELY A PERSON IS TO ENGAGE IN CRIMINAL BEHAVIORS

- Criminogenic risk = probability of criminal recidivism.
- Risk does not mean a risk of being violent or dangerous, FTA.
- Higher risk = higher supervision; lower risk = lower supervision.
- Do not mix high risk with low risk in program and groups!

RISK PRINCIPLE

Match the level of service to the offender's risk to re-offend.

- The higher the risk, the more intensive services needed.
- Prioritize supervision and treatment resources for higher risk participants.
- Low risk clients need much less services
- Do not mix low and high risk offenders in groups.

Target high risk offenders!

Criminogenic **R**isk/**N**eed Factors

Dr. Donald Andrews and Dr. James Bonta identified 8 risk factors:

1. Pro-criminal Attitudes
2. Antisocial Personality
3. Antisocial Peers
4. Substance Use Disorder
5. Family/Marital
6. School/Work
7. Leisure/Recreation
8. *Criminal History*

Criminogenic Needs

Criminogenic needs are dynamic risk factors that are directly linked to criminal behavior. The need principle calls for the focus of correctional treatment to be on criminogenic needs.

- Criminogenic needs can come and go unlike static risk factors that can only change in one direction (increase risk) and are immutable to treatment intervention
- Problem areas generally related to recidivism (e.g., antisocial attitudes). These are areas typically **targeted for intervention to reduce recidivism risk.**
- Treatment focuses on disorders and conditions that are responsible for criminal behavior.
- Must include proper level of supervision to decrease the likelihood of more criminal behavior.
- SUD among the biggest predictor of crime.
- **Individualized – no one size fits all.**

Non-Criminogenic Needs

Non-Criminogenic, Minor Needs	Indicators
Self-esteem	Poor feelings of self-esteem, self-worth
Vague feelings of personal distress	Anxious, feeling blue
Learning disability	Reduced capacity
Medical Needs	Physical deformity, nutrient deficiency

Over/Under Treating

- *Researchers have found that providing the wrong kinds of services can make outcomes worse by wasting resources and placing excessive burdens on people that interfere with productive activities like work or school (Lowenkamp & Latessa, 2004).*
- *In addition, placing people in the wrong treatment can actually increase crime and other undesirable outcomes (Lloyd, Hanby, & Serin, 2014; McCord, 2003; Welsh & Rocque, 2014).*

- Avoid over monitoring; over servicing.
- Prognosis of patient: poor, good, complicating features; more difficult to treat. How intensive should treatment be – don't over treat, don't undertreat.
- Cannot treat all the same (side effects).
- Too much or too little results in harm to the participant.

Responsivity

Identify personal strengths and/or individual factors that might influence the effectiveness of treatment services.

2 Kinds of Responsivity:

1. General responsivity. Using skill-based social learning and cognitive-behavioral programs that work to change behavior in general.

2. Specific responsivity. Targeting treatment programs to specific offender characteristics (e.g., cognitive ability, gender, strengths).

Maximize the offender's ability to learn from a rehabilitative intervention by providing cognitive behavioral treatment and tailoring the intervention to the learning style, motivation, abilities, and strengths of the offender.

Responsivity

Identify individual **strengths** and/or individual factors that might influence the effectiveness of treatment services.

- Computer skills
- Art work
- Strength in family
- Higher education
- Invested in 12-step program and community
- Likes to help others

Responsivity

Identify individual strengths and/or **individual factors** that might influence the effectiveness of treatment services.

- ADHD
- Anxiety
- Reading level
- Language
- Motivation
- Brain injury
- Disabilities

Responsivity

- Addresses the needs of the participant that would interfere with them receiving rehabilitation. First resolving symptoms or conditions that prevent attendance or engagement.
- Must identify clinical syndromes, impairments, or social service needs that usually do not cause crime but can interfere with rehabilitation.
- These needs don't necessarily lead to increased likelihood of committing crimes, but must be addressed to give them a chance; help them to respond to services.

- Homeless veteran suffering from trauma.
- Heroin addict suffering from withdrawals.
- Mentally ill suffering from psychosis.
- Any participant suffering from trauma.

Nutshsell (RNR) Model

RNR Model:

1. Risk principle = ***who*** do we treat.
2. Need principle = ***what*** do we treat.
3. Responsivity principle = ***how*** do we treat.

PSC Programs

- Defines how we set our phase structure
- Who should be in our programs (target populations)
- How and when to apply incentives and sanctions
- What TX services to administer and in what order

NADCP Best Practices and Standards V.II

"Drug Court participants often have a range of service needs extending well beyond substance abuse treatment. Standard VI addresses an array of co-occurring needs encountered frequently in Drug Courts, including best practices for delivering mental health treatment, trauma-informed services, criminal thinking interventions, family counseling, vocational or educational counseling, and prevention education to reduce health-risk behaviors."

NADCP Best Practices and Standards V.II

G. Criminal Thinking Interventions

- Participants receive an evidence-based criminal-thinking intervention after they are stabilized clinically and are no longer experiencing acute symptoms of distress such as cravings, withdrawal, or depression.
- Staff members are trained to administer a standardized and validated cognitive-behavioral criminal-thinking intervention such as:
  - Moral Reconation Therapy
  - Thinking for a Change program
  - Reasoning & Rehabilitation program

RNR in Treatment Courts ORDER!

MATCP
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1. Responsivity Needs

- ✓Housing
- ✓Detox
- ✓Anhedonia
- ✓MAT to stabilize
- ✓MI symptoms and stabilize

2. Criminogenic Needs

- ✓Managing cravings
- ✓Relapse training, drug refusal skills
- ✓12 step program
- ✓Delinquent peers, prosocial routine
- ✓Acute family crisis(no long term but immediate)
- ✓MRT under CBT Model

3. Maintenance Needs

- ✓Life skills
- ✓Humanitarian and restorative justice
- ✓Restitution to victims
- ✓Employment
- ✓Education

Continuing Care Plan

- ✓Tools
- ✓Prosocial peers

Criminogenic Risk and Needs Assessment Tools

- COMPAS
- RANT
- DUI-RANT
- LS / CMI
- ORAS

- Tools must be reliable and validated!!
- Validation sample is similar to program participants.
- Reexamine dynamic risk factors after program admission.

- *NDCI: Drug Court Practitioner Fact Sheet: "Selecting and Using Risk and Need Assessments"*

History of Offender Assessment

- 1st Generation: Professional Judgement; 1950s-1970s
- 2nd Generation: Evidence-based tools
- 3rd Generation: Evidence-Based and Dynamic
- 4th Generation: Systematic and Comprehensive

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Incentives and Sanctions

Michigan Drug Courts: Standards

- Derived from 10 Key Components

Calls for a regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including, but not limited to, the possibility of incarceration or confinement. (MCL 600.1072(1)(d))

Calls for the use of a coordinated strategy with a regimen of graduated sanctions and rewards to govern the court's responses to participants' compliance. (MCL 600.1060(c)(vi))

Sanctions Protocol

- Apply "best practices" based on the individual participants circumstances.

- There is no, "If A occurs, then B is the punishment."
  - Sanctions should never be a box you are checking off.

Michigan Drug Courts: Best Practices

- Clarity & Certainty
- Range of sanctions of varying magnitudes.
- Sanctions are imposed as quickly as possible after infraction.
- Fairness

Certainty

- Program manual should clearly inform participants of behavior that may subject them to sanctions and to the possible consequences.

Progressive Sanctions

- Treatment courts have a range of sanctions of varying magnitudes that may be administered in response to infractions.
- For goals that are especially difficult for participants to accomplish (i.e., distal goals), sanctions increase gradually and progressively in magnitude.
- For goals that are somewhat easier to achieve (i.e., proximal goals), higher magnitude sanctions may be administered after only a few infractions.

Distal vs. Proximal Goals

Marlowe, D. and Meyer, W. (n.d.). *The Drug court judicial benchbook*.

- Proximal
  - Participants are already capable of engaging in
  - Necessary for long-term objectives to be achieved
    - Appointment attendance
    - Court hearing attendance
    - Drug testing
- Distal
  - Behaviors that are ultimately desired, but may take participants some time to accomplish
    - Employment
    - Education
    - Abstinence/ Sobriety

When Distal Becomes Proximal

- At some point in each participant's recovery, distal goals become proximal.
  - Example:
    - During the first 90 days of being in the program, participants are concentrating on making meetings, appointments, status hearings, and drug testing. (Proximal Goals) Finding employment is not required. (Distal Goal)
    - After achieving some stability and being comfortable in their routine, the participant becomes ready to find employment. (Distal Goal Becoming Proximal)

Low Magnitude Sanctions

- Verbal admonishments
  - ❑ By all staff at time of infractions
  - ❑ Never disrespectful or insulting
  - ❑ Clarify: (1) nature of infraction, (2) importance of compliance, (3) future sanctions, and (4) alternative actions
- Letters of apology or explanation
  - ❑ May or may not read it aloud
- Essay assignments
  - ❑ Related to the infraction
- Daily activity scheduling and logs

Moderate Magnitude Sanctions

- ❑ Increased supervision
  - Not treatment!
- ❑ Phase demotion
  - Prepare for more effective transition
- ❑ Useful community service
- ❑ Monetary fees (≠ fines)
  - Realistic ability to pay
- ❑ Holding cell at courthouse

High Magnitude Sanction

- Day Court Watching
- Electronic surveillance
- Monitored home detention
- Flash incarceration
  - ~ Effectiveness and cost-effectiveness decline rapidly after 3 to 6 days
  - ~ Opportunity to prepare
- Termination

Speedy Hearing

- Sanctions are imposed as quickly as possible after noncompliant behavior. Treatment Courts do not wait for the next review hearing to impose a sanction if the behavior can be addressed more immediately.

Speedy Hearing Cont.

- Example: What not to do!
  - Lisa tests dirty on Sunday
    - Violation held 10 days after the positive test.
      - In the meantime, Lisa has returned to compliance. She attends meetings, tests clean, and attends therapy.
      - She is also sentenced to community service for her infraction almost 2 weeks ago and feels no one care that she's been doing so well.
      - Ultimately, the participant loses the connection between the infraction and the sanction.

Speedy Hearing Continued

- Example: What TO do!
  - Have participant seen in court as soon as possible.
  - Don't wait for the next status hearing.
    - Used to be accepted practice.

  - Research tells us to have maximum impact on modifying behavior, we must act with speed.
  - Delays may occur.
    - Participant wants a hearing with representation and there is evidence that takes time to get (lab results, testimony, etc.).

Fairness in Sanctions

- Participants in the same stages of change should receive similar sanctions for the same infraction.
  - Jim and Lisa test positive, are each at the same point in their recovery, and receive the same sanction.

- Response to similar behavior should be individualized based on stage of change.
  - Jim is new to the program and tests positive.
  - Lisa has been sober 1 year and tests positive.
  - Jim receives increased drug testing and verbal admonishment and Lisa receives community service.

- Clarity should be given to other participants following the above scenarios.

Due Process

- Due process requires that, like a probation violation hearing, rudimentary due process rights are provided.

Due Process

- Sanctions are imposed because of a violation of probation.
  - Use the procedure in MCR 6.445
  - Unless liberty interest is at stake, a judge has the authority to ex parte amend a probation order.

    (People v. Johnson, 210 Mich App 630(1995))
  - Should the judge do so?
  - You have a defense attorney on the team - Let him or her do their job.

Due Process

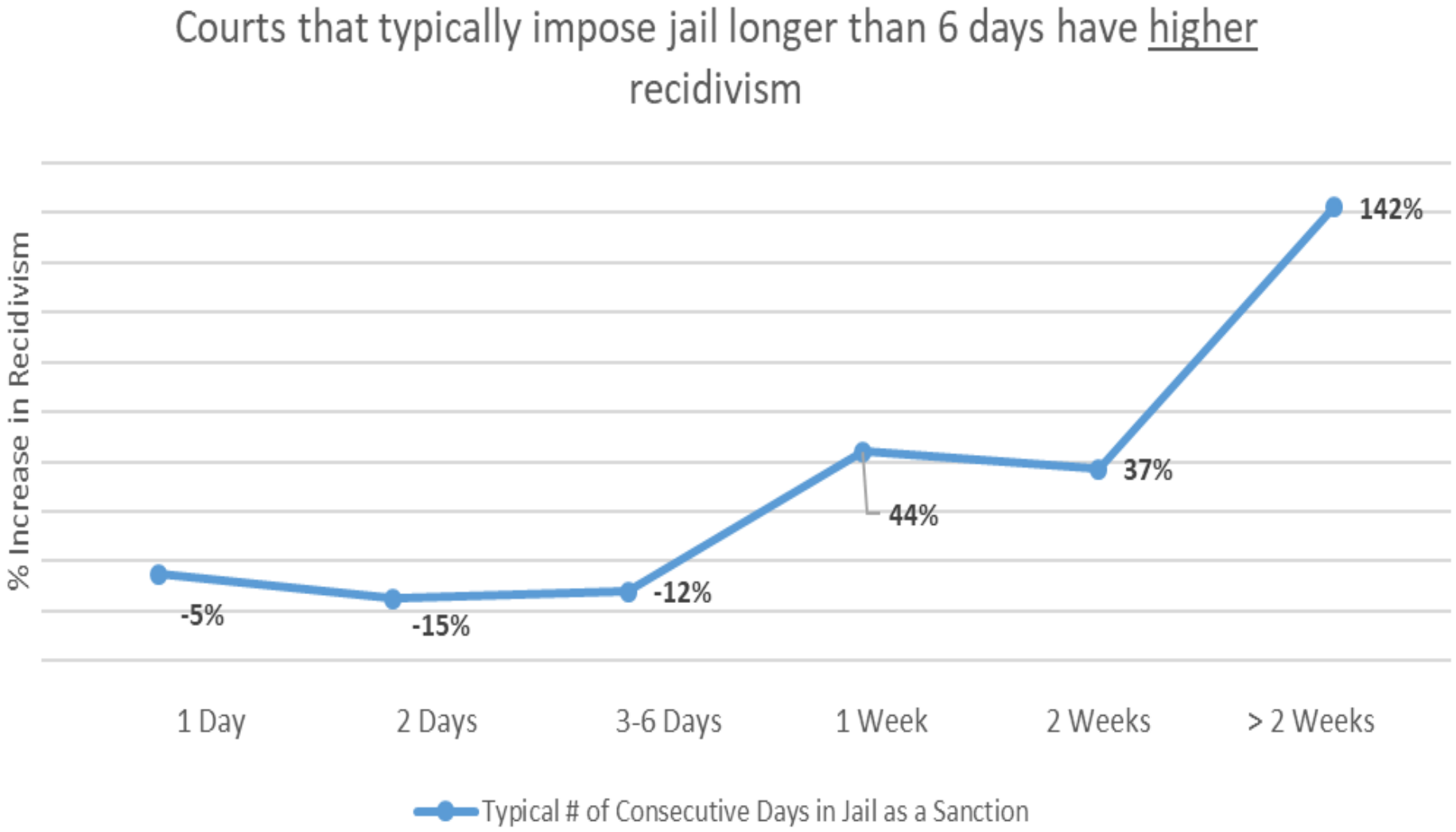
When you seek to modify participant behavior, lead by example.

- ❑ **Be Prepared**
- ❑ **Be On Time**
- ❑ **Be Humble**

Jail Sanctions

- Are imposed judiciously and sparingly.
- Are used only after numerous lesser sanctions have been attempted and failed, unless an immediate risk to public safety exists.
- Are definite in duration and typically last no more than 3 to 5 days.
- Participants are allowed to serve jail time at convenient times. (Weekends or around work schedules.)

Jail Sanction and Recidivism



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Sanctions or Therapeutic Consequence

- Punish Bad Behaviors
- Reward Good Behaviors
- Treat Sick Behaviors
  - Never increase treatment as a sanction or decrease treatment as an incentive for good behavior.

Sanctions or Therapeutic Consequences

- Treatment responses should be delivered by treatment professionals - NOT the Judge or PO.
  - Never used as a sanction, rather suggested by the treatment team to further support recovery.

The Bottom Line

Consequences for participants' behavior are predictable, fair, consistent, and administered in accordance with evidence - based principles of effective behavior modification.

Incentives – Best Practices

- Emphasis on Incentives
  - The drug court places as much emphasis on incentivizing productive behaviors as it does on reducing crime, substance abuse, and other infractions.
  - Incentives for positive behaviors should far outnumber sanctions for poor behaviors.
    - 4:1
  - Tracking incentives increases program use.

Incentives

- Incentives should follow the model of sanctions in that:
  - Accomplishing distal goals should garner a higher magnitude incentive.
  - Accomplishing proximal goals should garner a lower magnitude incentive.

Incentives-A Few Examples

Length of Time in Program Considered

Low- Moderate Magnitude Incentives

- Judicial/Verbal Praise
- Applause For Clean Time during Status Reviews.
- Sobriety Tokens
- Reduced 12 Step Attendance
- Extend Curfew
- Recognize Family and Friends Present
- Reduced Reporting Requirements
- Fishbowl Drawing

High Magnitude Incentive

- Phase Advancement
- Personalized gift cards
- Sobriety Court License Waiting Period
  - 60-90 Days Based on compliance
- Travel
  - Testing Conditions in Place
  - Phone check-ins may be required
- Reduced Drug or Alcohol Testing
- Waiver of fees

Drug Testing Reduction

- Last incentive used near completion of program.
- Never less than 2x per week.
- Only objective tool to determine if a participant is sober.
- Participants may look well, speak well, and otherwise appear compliant. Drug tests prove wellness.

The Fishbowl Procedure

- Each month participants are awarded tickets for each positive thing they do that month.
- Examples include but are not limited to:
  - Earning AA/NA Coins
  - Extra meeting attendance
  - Helping another participant
  - Obtaining Employment
  - Graduating HS or GED
- Be generous and creative so that most participants who are doing well get to play.
- This can be done virtually - Spin the Wheel Application.

No Budget for Incentives

- You don't need gift cards.
- Some effective incentives are free:
  - Provide a leave court early pass
  - Skip to the head of the line – go first at next UA testing
  - Go 1st at Court Review
  - Subtract X number hours of community service
- The best, most long-lasting incentives are "natural": a paycheck, diploma, regaining custody of children, repairing relationships, feeling better, etc.
- Natural Incentives are the by-product of good treatment, and will help participants long after probation ends.
- Our responses keep clients engaged until the natural incentives kick-in.

Shannon Carey, Ph.D.- NPC Research

Incentives and Sanctions Hypothetical #1

Length in program: 3 months

Sobriety days: 10 days

Drug of choice: opiates

Prior violation(s): 1 (positive drug test)

Prior sanction(s): 1st essay assignment on cross addiction (with included therapeutic adjustment)

Current violation: missed test

Incentives and Sanctions Hypothetical #2

Length in program: 5 months

Sobriety days: 50 days

Drug of choice: cocaine

Prior violation(s): 1st - late PO appointment and failed to turn in NA sheets
2nd - failed to appear PO appointment and failed to turn in NA sheets

Prior sanction(s): 1st - verbal admonishment

2nd - daily activity log and 8 hours C/S

Other information: Obtained employment in last week- (no review hearing since gaining employment)

Current violation: Failed to appear for probation appointment and treatment.

Incentives and Sanctions Hypothetical #3

Length in program: 6 months

Sobriety days: 93 days

Substance abused: alcohol

Prior violations: 1st - Positive ETG

2nd - Missed/Unexcused treatment session

3rd (During COVID) – Unable to address - Missed test - participant stated they had a fever was unable to test.

4th (During COVID) – Unable to address - Attempted to use someone else's urine for testing

Prior sanctions: 1st - Judicial verbal admonishment

2nd - Daily Activity Logs - completed

**Review hearings were paused due to COVID

3rd – Unable to address due to COVID

4th - Unable to address due to COVID - Review Hearings have resumed for this program

Current violation: missed test and attempt to use someone else's urine. Participant claims they are currently sick with COVID symptoms.

Incentives and Sanctions Resources

- Behavior Modification 101 for Drug Courts: Making the Most of Incentives and Sanctions – Douglas Marlow, JD, PhD
- NADCP Adult Drug Court Best Practices
- SCAO Problem Solving Court Best Practices
- NDCI Drug Court Judicial Bench Book
- NADCP Incentives and Sanctions samples

SEVERE MENTAL ILLNESS, DIAGNOSIS AND TREATMENT

Anthony R. Ellis, M.D.
Chief Medical Officer
Genesee Health System

Understanding what severe mental illness looks like

- Mental illnesses are common in the United States. Nearly one in five U.S. adults live with a mental illness (46.6 million in 2017).
- Mental illnesses include many different conditions that vary in degree of severity, ranging from mild to moderate to severe.
- Two broad categories can be used to describe these conditions: Any Mental Illness (AMI) and Serious Mental Illness (SMI).
- AMI encompasses all recognized mental illnesses. SMI is a smaller and more severe subset of AMI.

AMI vs. SMI

- Any mental illness (AMI) is defined as a mental, behavioral, or emotional disorder. AMI can vary in impact, ranging from no impairment to mild, moderate, and even severe impairment (e.g., individuals with serious mental illness as defined below).
- In 2017, among the 46.6 million adults with AMI, 19.8 million (42.6%) received mental health services in the past year. More women with AMI (47.6%) received mental health services than men with AMI (34.8%).
- Serious mental illness (SMI) is defined as a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities. The burden of mental illnesses is particularly concentrated among those who experience disability due to SMI.
- In 2017, there were an estimated 11.2 million adults aged 18 or older in the United States with SMI. This number represented 4.5% of all U.S. adults. The prevalence of SMI was higher among women (5.7%) than men (3.3%).

How many people receive treatment for SMI?

- Mental health services received within the past year by U.S. adults 18 or older with serious mental illness (SMI), defined as having received inpatient treatment/counseling or outpatient treatment/counseling or having used prescription medication for problems with emotions, nerves, or mental health.
- In 2017, among the 11.2 million adults with SMI, 7.5 million (66.7%) received mental health treatment in the past year.
- More women with SMI (71.5%) received mental health treatment than men with SMI (57.7%).
- The percentage of young adults aged 18-25 years with SMI who received mental health treatment (57.4%) was lower than adults with SMI aged 26-49 years (66.2%) and aged 50 and older (75.6%).

Data Sources

- Merikangas KR, He JP, Burstein M, Swanson SA, Avenevoli S, Cui L, Benjet C, Georgiades K, Swendsen J. Lifetime prevalence of mental disorders in U.S. adolescents: results from the National Comorbidity Survey Replication--Adolescent Supplement (NCS-A). J Am Acad Child Adolesc Psychiatry. 2010 Oct;49(10):980-9. PMID: 20855043
- Substance Abuse and Mental Health Services Administration. (2018). Key substance use and mental health indicators in the United States: Results from the 2017 National Survey on Drug Use and Health (HHS Publication No. SMA 18-5068, NSUDH Series H-53). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHFFR2017/NSDUHFFR2017.pdf.

The Diagnoses

- Schizophrenia: Schizophrenia is a serious mental illness that affects how a person thinks, feels, and behaves. People with schizophrenia may seem like they have lost touch with reality, which causes significant distress for the individual, their family members, and friends. If left untreated, the symptoms of schizophrenia can be persistent and disabling. However, effective treatments are available. When delivered in a timely, coordinated, and sustained manner, treatment can help affected individuals to engage in school or work, achieve independence, and enjoy personal relationships.
- Schizophrenia is typically diagnosed in the late teen years to the early thirties and tends to emerge earlier in males (late adolescence – early twenties) than females (early twenties – early thirties). A diagnosis of schizophrenia often follows the first episode of psychosis, when individuals first display symptoms of schizophrenia. Gradual changes in thinking, mood, and social functioning often begin before the first episode of psychosis, usually starting in mid-adolescence.

Schizophrenia “Positive” symptoms

- Psychotic symptoms include altered perceptions (e.g., changes in vision, hearing, smell, touch, and taste), abnormal thinking, and odd behaviors. People with psychotic symptoms may lose a shared sense of reality and experience themselves and the world in a distorted way. Specifically, individuals typically experience:
- Hallucinations, such as hearing voices or seeing things that aren’t there
- Delusions, which are firmly held beliefs not supported by objective facts (e.g., paranoia - irrational fears that others are “out to get you” or believing that the television, radio, or internet are broadcasting special messages that require some response)
- Thought disorder, which includes unusual thinking or disorganized speech

Schizophrenia “Negative” symptoms

- Negative symptoms include loss of motivation, disinterest or lack of enjoyment in daily activities, social withdrawal, difficulty showing emotions, and difficulty functioning normally. Specifically, individuals typically have:
- Reduced motivation and difficulty planning, beginning, and sustaining activities
- Diminished feelings of pleasure in everyday life
- “Flat affect,” or reduced expression of emotions via facial expression or voice tone
- Reduced speaking

Cognitive symptoms

- Cognitive symptoms include problems in attention, concentration, and memory. For some individuals, the cognitive symptoms of schizophrenia are subtle, but for others, they are more prominent and interfere with activities like following conversations, learning new things, or remembering appointments. Specifically, individuals typically experience:
- Difficulty processing information to make decisions
- Problems using information immediately after learning it
- Trouble focusing or paying attention

Diagnosed by interview, history, exam, labs, and imaging

- Diagnosis of schizophrenia involves ruling out other mental health disorders and determining that symptoms are not due to substance abuse, medication or a medical condition. Determining a diagnosis of schizophrenia may include:
- Physical exam. This may be done to help rule out other problems that could be causing symptoms and to check for any related complications.
- Tests and screenings. These may include tests that help rule out conditions with similar symptoms, and screening for alcohol and drugs. The doctor may also request imaging studies, such as an MRI or CT scan.
- Psychiatric evaluation. A doctor or mental health professional checks mental status by observing appearance and demeanor and asking about thoughts, moods, delusions, hallucinations, substance use, and potential for violence or suicide. This also includes a discussion of family and personal history.
- Diagnostic criteria for schizophrenia. A doctor or mental health professional may use the criteria in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), published by the American Psychiatric Association.

Treatment of schizophrenia

- Treatments include: Antipsychotic Medications that can help reduce the intensity and frequency of psychotic symptoms. They are usually taken daily in pill or liquid forms. Some antipsychotic medications are given as injections once or twice a month, which some individuals find to be more convenient than daily oral doses.
- Many people taking antipsychotic medications have side effects such as weight gain, dry mouth, restlessness, and drowsiness when they start taking these medications. Some of these side effects subside over time, but others may persist, which may cause some people to consider stopping their antipsychotic medication.
- Cognitive behavioral therapy, behavioral skills training, supported employment, and cognitive remediation interventions may help address the negative and cognitive symptoms of schizophrenia. A combination of these therapies and antipsychotic medication is common.
- Educational programs for family members, significant others, and friends offer instruction about schizophrenia symptoms and treatments, and strategies for assisting the person with the illness.

Coordinated Specialty Care

- Coordinated specialty care (CSC) is a general term used to describe recovery-oriented treatment programs for people with first episode psychosis, an early stage of schizophrenia. A team of health professionals and specialists deliver CSC, which includes psychotherapy, medication management, case management, employment and education support, and family education and support.
- Assertive Community Treatment (ACT) is designed especially for individuals with schizophrenia who are at risk for repeated hospitalizations or homelessness. The key elements of ACT include a multidisciplinary team, including a medication prescriber, a shared caseload among team members, direct service provision by team members, a high frequency of patient contact, low patient to staff ratios, and outreach to patients in the community. ACT reduces hospitalizations and homelessness among individuals with schizophrenia.

Another Common SMI is Bipolar Disorder

- Bipolar disorder (formerly called manic-depressive illness or manic depression) is a mental disorder that causes unusual shifts in mood, energy, activity levels, concentration, and the ability to carry out day-to-day tasks.
- Bipolar I Disorder— defined by manic episodes that last at least 7 days, or by manic symptoms that are so severe that the person needs immediate hospital care. Usually, depressive episodes occur as well, typically lasting at least 2 weeks. Episodes of depression with mixed features (having depressive symptoms and manic symptoms at the same time) are also possible.
- Bipolar II Disorder— defined by a pattern of depressive episodes and hypomanic episodes, but not the full-blown manic episodes that are typical of Bipolar I Disorder.

Symptoms of Bipolar Disorder

- People with bipolar disorder experience periods of unusually intense emotion, changes in sleep patterns and activity levels, and uncharacteristic behaviors—often without recognizing their likely harmful or undesirable effects. These distinct periods are called “mood episodes.” Mood episodes are very different from the moods and behaviors that are typical for the person. During an episode, the symptoms last every day for most of the day. Episodes may also last for longer periods, such as several days or weeks.
- Sometimes people experience both manic and depressive symptoms in the same episode. This kind of episode is called an episode with mixed features. People experiencing an episode with mixed features may feel very sad, empty, or hopeless, while, at the same, time feeling extremely energized.
- The person may not feel that anything is wrong, but family and friends may recognize the changes in mood or activity levels as possible bipolar disorder.

Diagnosis of Bipolar Disorder

- Proper diagnosis and treatment can help people with bipolar disorder lead healthy and active lives. Talking with a doctor or other licensed health care provider is the first step. The health care provider can complete a physical exam and order necessary medical tests to rule out other conditions. The health care provider may then conduct a mental health evaluation or provide a referral to a trained mental health care provider, such as a psychiatrist, psychologist, or clinical social worker who has experience in diagnosing and treating bipolar disorder.
- Mental health care providers usually diagnose bipolar disorder based on a person's symptoms, lifetime history, experiences, and, in some cases, family history. Accurate diagnosis in youth is particularly important.
- We use the DSMV criteria for manic episode, hypomanic episode and depressive episode and exclude other medical causes with labs, and sometimes imaging.

Psychosis in Bipolar Disorder

- Psychosis: Sometimes, a person with severe episodes of mania or depression may experience psychotic symptoms, such as hallucinations or delusions. The psychotic symptoms tend to match the person's extreme mood. For example:
- People having psychotic symptoms during a manic episode may have the unrealistic belief that they are famous, have a lot of money, or have special powers.
- People having psychotic symptoms during a depressive episode may falsely believe they are financially ruined and penniless, have committed a crime, or have an unrecognized serious illness.
- As a result, people with bipolar disorder who also have psychotic symptoms are sometimes incorrectly diagnosed with schizophrenia. When people have symptoms of bipolar disorder and also experience periods of psychosis that are separate from mood episodes, the appropriate diagnosis may be schizoaffective disorder (another common SMI).

Treatments and Therapies for Bipolar Disorder

- An effective treatment plan usually includes a combination of medication and psychotherapy. Bipolar disorder is a lifelong illness. Episodes of mania and depression typically come back over time. Between episodes, many people with bipolar disorder are free of mood changes, but some people may have lingering symptoms. Long-term, continuous treatment can help people manage these symptoms.
- Medications generally used to treat bipolar disorder include mood stabilizers and second-generation (“atypical”) antipsychotics. Treatment plans may also include medications that target sleep or anxiety. Health care providers often prescribe antidepressant medication to treat depressive episodes in bipolar disorder, combining the antidepressant with a mood stabilizer to prevent triggering a manic episode.
- Electroconvulsive Therapy (ECT): ECT is a brain stimulation procedure that can help people get relief from severe symptoms of bipolar disorder.

Therapy for Bipolar Disorder

- Psychotherapy is a term for a variety of treatment techniques that aim to help a person identify and change troubling emotions, thoughts, and behaviors. It can provide support, education, and guidance to people with bipolar disorder and their families. Treatment may include therapies such as cognitive-behavioral therapy (CBT) and psychoeducation, which are used to treat a variety of conditions.
- Treatment may also include newer therapies designed specifically for the treatment of bipolar disorder, including interpersonal (IPT) and family-focused therapy.
- Regular aerobic exercise, such as jogging, brisk walking, swimming, or bicycling, helps with depression and anxiety, promotes better sleep, and is healthy for your heart and brain. There is also some evidence that anaerobic exercise such as weightlifting, yoga, and Pilates can be helpful.

Summary

- The three most common types of SMI are Schizophrenia, Schizoaffective Disorder, and Bipolar Disorder.
- They are frequently comorbid with Substance use disorders
- They are diagnosed using the DSM V, interview, family history, and other medical diagnoses are excluded with laboratory studies and sometimes brain imaging.
- They are treated with medications, psychotherapy and psychosocial treatments aimed at treatment adherence, support, minimizing substance use disorders, and helping with vocational adjustment.
- Questions?

References and supports

- https://www.nimh.nih.gov/health/topics/bipolar-disorder/index.shtml
- https://www.nimh.nih.gov/health/topics/schizophrenia/index.shtml
- https://www.mayoclinic.org/diseases-conditions/schizophrenia/diagnosis-treatment/drc-20354449
- https://www.nimh.nih.gov/health/find-help/index.shtml
- https://www.nami.org/Support-Education

MICHIGAN ASSOCIATION OF TREATMENT COURT PROFESSIONALS

Drug Testing
Best Practices and Standards

Alma Valenzuela

Lauren Fetner

Drug Testing Best Practices & Standards

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Statutory Requirement

Drug Courts- MCL 600.1072(1)(b) &
Veteran Courts - MCL 600.1207(1)(c):

A drug treatment court shall provide participants with … ***mandatory periodic and random testing for the presence of any controlled substance or alcohol in a participant's blood, urine or breath*** to the extent practicable the best available, accepted, and scientifically valid methods.

Mental Health Courts - MCL 600.1096(1)(b):

If determined to be necessary or appropriate*, periodic and random testing for the presence of any nonprescribed controlled substance or alcohol in a participant's blood, urine, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods.*

Drug Testing Best Practices & Standards

Any statement or other information obtained as a result of participating in an assessment, treatment, or testing while in a drug treatment court is confidential and exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use. (MCL 600.1072(2))

Drug Testing Best Practices & Standards

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Outcomes are significantly better when Drug Courts specify their policies and procedures clearly in a participant manual or handbook.

"Adult Drug Court Best Practice Standards. Volume II", NADCP, 2015, www.nadcp.org/Standards

Drug Testing Best Practices & Standards

Examples of provisions:

- Drug and alcohol testing will be performed frequently and on a random basis throughout program participation.
- Drug and alcohol testing will be performed on weekends and holidays.
- Drug and alcohol testing will be performed by a laboratory or program approved by the drug court.
- Because cannabinoids (a byproduct of marijuana) may persist in the body for several days, marijuana users have a two-week grace period following enrollment during which no sanctions will be given for positive cannabinoid test results. However, after two weeks positive cannabinoid tests will be presumed to reflect new marijuana use. The participant bears the burden of establishing a convincing alternative explanation for such results. After two consecutive cannabinoid-negative urine specimens, the drug court will presume that subsequent positive cannabinoid results reflect new use.
- The participant must arrive at the testing facility as soon as possible after being notified that a test has been scheduled. Participants will be sanctioned for an unexcused failure to arrive within eight hours of being notified that a urine test has been scheduled or within four hours for tests that have short detection windows, such as breath or oral fluid tests.

Drug Testing Best Practices & Standards

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• A staff person will directly observe the collection of test specimens. The staff person will be of the same gender, unless the participant, the defense attorney or therapist request otherwise.

• Failure to provide a test specimen or providing an insufficient volume of fluid for analysis is an infraction of the rules of the program and will be sanctioned accordingly. The participant will be given sufficient time (up to one hour) to deliver a urine specimen and allowed to drink up to one cup of water in the presence of staff.

• The participant may not drink any fluid excessively before testing and must avoid environmental contaminants, over-the-counter medications, or foods that can reduce the accuracy of the tests. Potential contaminants that the participant needs to avoid are [provide list of contaminants].

• The participant may be subjected to immediate spot testing if the drug court has reason to suspect recent use or during high-risk times such as weekends or holidays.

• The participant has the right to challenge the results of a screening test and to request proof that an adequate chain of custody was established for the specimen. The Drug Court will rely on the results of an instrumented or laboratory-based test in confirming whether substance use has occurred. The participant may be charged the cost of the confirmation test if a screening test is confirmed.

"Adult Drug Court Best Practice Standards. Volume II", NADCP, 2015, www.nadcp.org/Standards

Drug Testing Best Practices & Standards

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Fundamental Components of Drug Testing

One of the fundamental components of treating and supervising high-risk/high needs individuals in treatment courts is that abstinence from drugs and alcohol is a distal goal.

Further, when faced with perceived certainty that their use of a substance will be detected, participants will seek alternative means to address their cravings, whether that is through dishonesty, manipulation, or using a drug that will likely go undetected.

Drug Testing Best Practices & Standards

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Fundamental Components of Drug Testing

It is important not to over-interpret a negative test result. A negative result does not mean that a patient has not used substances; it merely means that the patient has not used the substance(s) targeted by the test within the window of detection or used an amount less than the test is capable of detecting.

The team should respond appropriately to behaviors and support the participant toward his/her goals.

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RANDOMIZATION METHODS:

Flip a coin
Names in a hat
Excel formula
Deck of cards
Roll a dice
Automated Case Management System

Drug Testing Best Practices & Standards

Best Practices 2(b):

- Urine tests are delivered no more than 8 hours after a participant is notified to test. Oral fluid tests should be delivered no more than 4 hours after being notified that a test was scheduled.

- Too much notification can lead to dissolved metabolites, or timed usage.

Drug Testing Best Practices & Standards

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Frequency

Best Practices DCs 3(b):

- Urine testing at least twice per week until last phase.

Best Practices MHCs 3(b):

- Test at least one time per week
- Continuous tests (ankle monitors) should be worn for 90 days.
- Examine samples for drugs of abuse other than the participant's drug of choice.

Drug Testing Best Practices & Standards

Promising Practices:

- AOD testing continues uninterrupted to detect relapse while other services such as TX and supervision are adjusted.

Drug Testing Best Practices & Standards

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Detection of Substances

Best Practices DCs 3(b)(ii):

- Test specimens are examined for **ALL** unauthorized substances that are suspected to be used by the participants.

- Randomly suspected specimens are tested periodically for a broader range of substances to detect new substances that might be emerging.

Drug Testing Best Practices & Standards

But what if we are a DWI court that only accepts alcohol offenses? Why should we test for drugs other than alcohol?

Impaired driving is NOT an alcohol-only issue

Participants can easily evade detection of their substance use by switching to drugs that have similar effects but are not detected by the test. (American Society of Addiction Medicine, 2013)

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Scientifically Valid Drug Testing Methods

- Urine testing
- Breath testing
  - Breathalyzers and/or preliminary breath tests
  - Interlocks and home breath testing (Soberlink)
- Oral / saliva testing
- Skin testing
  - Sweat patch
  - Transdermal alcohol (SCRAM)
- Hair testing
- Nail testing
- Blood testing

Drug Testing Best Practices & Standards

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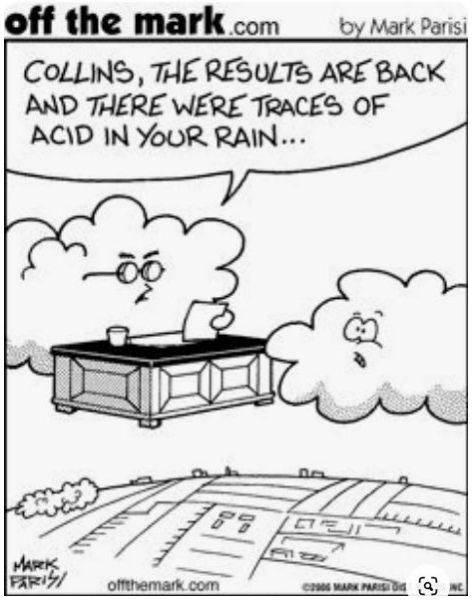
- Urine testing
  - Advantages
    - Broadest range of drug tests
    - Lower costs
    - Contains high concentration of drugs
    - Detects both recent and past usage
  - Disadvantages
    - Invasive collection
    - Drug concentration influenced by fluid
    - Easily adulterated
  - Types of tests
    - Immunoassay (Instant)
    - Gas chromatography/mass spectrometry (GC/MS)

Drug Testing Best Practices & Standards

- Test specimens are examined routinely for evidence of dilution and adulteration
  - 30 ml or more
  - 90-100˚
  - Color, smell, general appearance
  - Creatinine concentration
  - Specific gravity


off the mark.com
by Mark Parisi
COLLINS, THE RESULTS ARE BACK AND THERE WERE TRACES OF ACID IN YOUR RAIN...
MARK PARISI
offthemark.com

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Ways in which urine can be tampered with[1]

- **Pre-collection**
  - Dilution: Consuming large quantities of water or fluids prior to collection (water loading, flushing, hydrating, etc.)
  - Adulteration: Consuming products designed to "enhance" drug elimination or removal of drugs (Gold Seal™, Clean 'n Clear™, Test-Free™, Naturally Klean™, etc.)

- **Post-collection**
  - Dilution / Substitution: Adding clean urine to the specimen or exchanging urine for such common substitutes as apple juice and tea.
  - Adulteration: Adding oxidizing agents which mask the presence of any drugs. [Nitrite (Klear™), Chromate (Urine Luck™), Iodine, Bleach, and Horse Radish Peroxidase/H2O2 (Stealth™)].

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- Breath testing
  - Advantages
    - Difficult to adulterate
    - Immediate results
    - Inexpensive
    - Easy to use
  - Disadvantages
    - Limited to only alcohol
    - Short detection window
  - Types of tests
    - Breathalyzers
    - Interlock and home breath testing (Soberlink)

Drug Testing Best Practices & Standards

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- Oral fluid testing
  - Advantages
    - Less invasive
    - No need for gender specific testing
    - Harder to adulterate
  - Disadvantages
    - Short detection window

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Confirmation Testing

Best Practice 4(b)(ii):

- If a participant denies use on a positive test, the same specimen is sent for confirmation using instrumented testing such as GC/MS or LC/MS.
- It is necessary to validate positive screening results in order to rule out the potential of a false positive by performing a confirmation procedure.
- Confirmatory tests are not withheld due to the participant's inability to pay.
- Sanctions should not be imposed without a confirmation or admission.

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Cutoff Levels

Best Practice 4(b)(iv):

- Cutoff levels are not interpreted as evidence of new substance use or changes in participants' substance use patterns.
- A specimen that is found to contain a drug or drug metabolite in an amount above the established cut off level will yield a positive result.
- A specimen that contains a drug or drug metabolite in an amount below the established cut off level, will yield a negative result.
- Immunoassay tests are designed to detect the presence of a drug or drug metabolite not how much of a drug is in the system.

Drug Testing Best Practices & Standards

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Witnessed Collection

Standard 5(a)(i & ii):

- The person collecting the sample must be of the same sex – MDOC.
- Breathalyzers must be administered by trained breath alcohol technicians – U.S. DOJ.
- Staff should be trained to prevent tampering and substitution of fraudulent specimens.

Promising practice:

- Participants should not be permitted to undergo independent AOD drug testing in lieu of being tested by trained personnel assigned to or authorized by the drug court.

Drug Testing Best Practices & Standards

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Chain of Custody

Standard 6(a)(ii):

- Drug courts are required to follow generally accepted chain-of-custody procedures when handling test specimen.
  - A chain of custody form is completed once a urine sample has been collected.
  - This form ensures the identity and integrity of the sample through transport, testing, and reporting of results.

Drug Testing Best Practices & Standards

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Timely Test Results

Best Practice 6(b)(ii):

- There are significantly greater reductions in recidivism and cost benefits when the drug and alcohol test results are received within 48 hours of sample collection.
  - Consideration for in home alcohol units
  - Testing agency should provide this service.

Questions to Testing Vendors

- What supplies are needed to conduct the drug testing? What are their costs?
- What staff and facilities will be needed to conduct the testing, store supplies and samples, etc.?
- What is the methodology used to produce the test results? Who interprets the results? What staff training is needed? How are test results recorded? How are test results reported to the court?
- How quickly can test results be obtained?
- What potential for error is associated with producing drug test results? Reading the test results?
- Is the test more accurate for some types of drugs than for others?
- What type of confirmation process is required? Suggested?
- How much does each test cost? What does this cost include? What additional costs associated with the drug testing process need to be budgeted?
- How many drugs can the methodology test for at once?

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State Court Administrative Office
Trial Court Services
Problem-Solving Courts

Program Data and Evaluation

Training Topics

- Why Data is important
- Process Evaluation
- Outcome Evaluation
- Access to Data
- Equity and Inclusion Assessment

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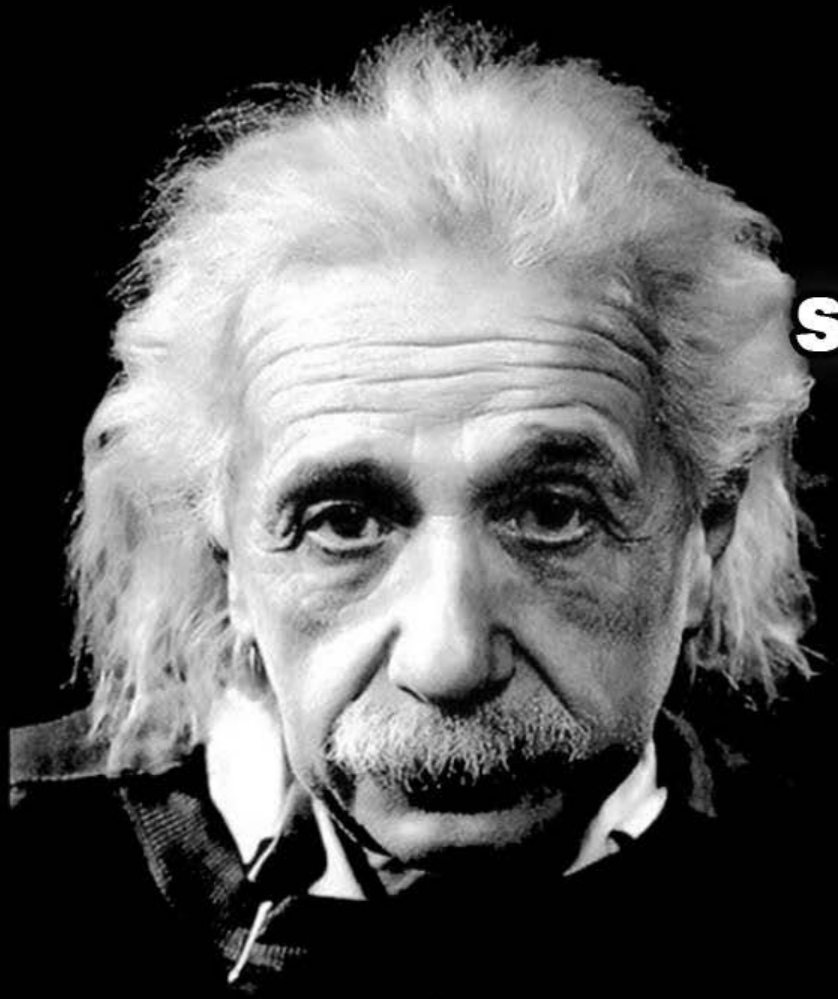

I have no special talent. I am only passionately curious.

~ Albert Einstein

Why Collect Data and Evaluate?

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- Statutory Requirements
- Funders
- Certification
- Key Component #8 / Essential Element #8
- Community Stakeholders
- Fidelity to the Model (Process Evaluation)
- Overall Program Effectiveness (Outcome Evaluation)

The Research Says….

- Adherence to best practices is generally poor in most sectors of the criminal justice and substance use disorder treatment systems (Friedmann et al., 2007; Henderson et al., 2007; McLellan et al., 2003; Taxman et al., 2007). Programs infrequently deliver services that are proven to be effective and commonly deliver services which have not been subjected to careful scientific scrutiny. Over time, the quality and quantity of the services provided may decline precipitously (Etheridge et al., 1995; Van Wormer, 2010).
- **The best way for a drug court to guard against these prevailing destructive pressures is to monitor its operations routinely, compare its performance to established benchmarks, and seek to align itself continually with best practices.**

The Research Says….

- A multisite study involving approximately seventy drug courts found that programs had **more than twice the impact on crime and were more than twice as cost-effective** when they monitored their operations on a consistent basis, reviewed the findings as a team, and modified their policies and procedures accordingly (Carey et al., 2008, 2012).

- Programs that had external independent evaluators review their program and suggest changes, and then implemented those changes, were 100 percent more effective at reducing cost and 85 percent more effective in reducing recidivism than programs that did not. (Carey, Mackin, & Finigan, 2012)

Performance Measures

- "Performance measurement refers to the establishment of research-based ***indicators*** to measure program activity." (Local Drug Court Research: Navigating Performance Measures and Process Evaluations - NDCI).

- "Performance measurement is an excellent option for drug court research and can assist in developing **correlations** between program activities and outcomes." (Epstein, Coates, Wray, & Swain, 2005). (Adult Drug Court Review. V2, Issue 2)

Performance Measures

NADCP Adult Drug Court Best Practice Standards, Vol. II, identifies 5 performance measures:

1. **Retention**
2. **Sobriety**
3. **Recidivism – in program.**
4. **Units of Service (activities)**
5. **Length in Program**

Performance measures are ongoing. Identifies potential problems for further scrutiny. May differ based on grant types.

MHC Performance Measures

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Participant Accountability

1. In-Program Reoffending
2. Attendance at Scheduled Judicial status Hearings
3. Attendance at Scheduled therapeutic Sessions

Social Functioning

4. Living Arrangement

Case Processing

5. Retention
6. Time from Arrest to Referral
7. Time from Referral to Admission
8. Total Time in Program

Collaboration

9. Team Collaboration
10. Agency Collaboration

Individualized and Appropriate Treatment

11. Need-Based Treatment and Supervision

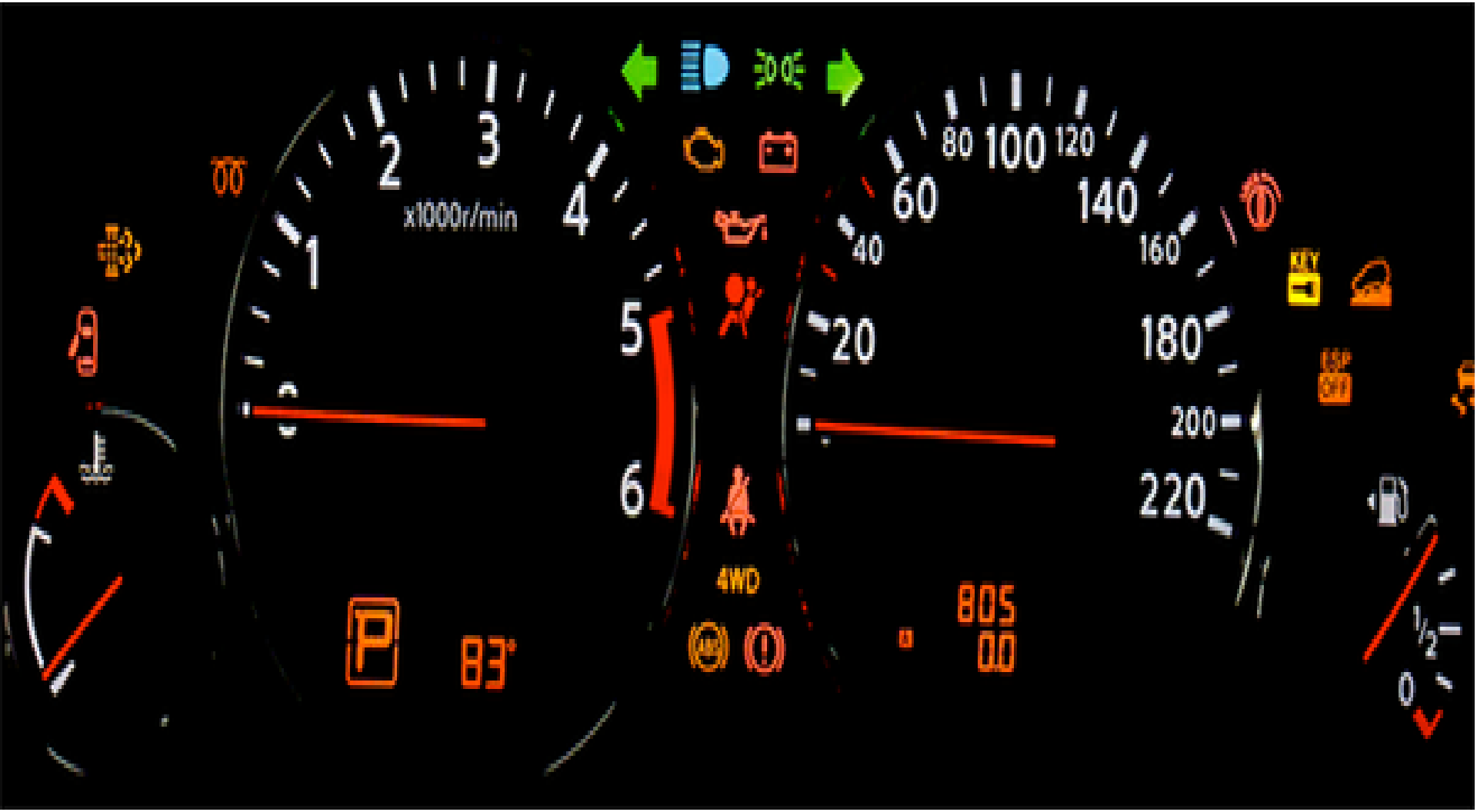
Procedural Fairness

12. Participant-Level Satisfaction

Aftercare/Post-Exit Transition

13. Participant Preparation for Transition
14. Post-Program Recidivism

The Red Flags / Indicators



The Mechanic Evaluator

Treatment Court Vehicle

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Treatment Court Dashboard

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- Incentives and Sanctions
- Review Hearings
- Treatment Types
- Drug Testing types, Frequency, and Results
- Timeliness of Services
- 12-step Meetings
- Discharge Reason
- Improved Education
- Improved Employment Status
- Improved Mental Health
- Retention
- Sobriety Days
- Housing

Treatment Court Toolbox

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- **DCCMIS:** Drug Court Case Management Information System (MSDR)
- **DCAS:** Drug Case Analysis System
- **JDW:** Judicial Data Warehouse
- **LEIN:** Law Enforcement Information Network
- **I-CHAT:** Internet Criminal History Access Tool
- **EIAT:** Equity and Inclusion Assessment Tool

MICHIGAN ACCM DRUG COURT CASE MANAGEMENT INFORMATION SYSTEM

One Court of Justice

CLIENT | MENU | ADMIN | LOGOUT

- Initial Eligibility Screening
- Personal Demographics
- Personal Journal
- Local Assessment
- Substance Abuse Testing
- Medical History
- Service/Veteran Information
- Employment History
- Criminal History
- Treatment
- Ancillary Services
- Incentives/Sanctions
- Fees
- Community Service
- Interlock
- Program History
- Discharge

Bob, Bill | Admit Date: 05/16/2019 | Court Type: Sobriety | Data, Reports | Case Status: Active

NO PICTURE AVAILABLE

PERSONAL INFORMATION

PERSONAL DEMOGRAPHICS

NO PICTURE AVAILABLE

Photo History

Name: *First: Bill Middle: Bob Suffix: Select

Alias(es):

E-Mail:

Point of Contact:

Point of Contact Phone: ( ) -

Phone - Home:

Phone - Work:

Phone - Cell:

SSN #: ***-**-4565

DL #:

Driver's License Status : Select

State ID#:

Race: Caucasian

Ethnicity: Select

Gender: Male Female

Height: 0 feet - 0 inches

Weight: lbs.

Eyes: Select

Hair: Select

DOB: 10/25/1975

Age at Admission to the Court Program: 43

Birth Place:

Is English the primary spoken language? Yes No

County of Residence: Select

DISCHARGE REASON				
VALUE	FREQUENCY	CUMULATIVE FREQUENCY	PERCENT	CUMULATIVE P
Blank	1	1	1.35	1.35
Successfully Completed	60	61	81.08	82.43
Unsuccessful/New Offense	1	62	1.35	83.78
Unsuccessful/Non-Compliant	0	62	0	83.78
Unsuccessful/Absconded	4	66	5.41	89.19
Voluntarily Withdrew	4	70	5.41	94.59
Transferred to another Jurisdiction	1	71	1.35	95.95
Statutory Ineligibility	0	71	0	95.95
Medical Discharge	0	71	0	95.95
Death	3	74	4.05	100
Other	0	74	0	100

Process Evaluation Measures

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According to NRAC, program components that should be measured in process evaluations include:

1. Program Goals
2. Target Population
3. Team Member Cooperation
4. Court Processes
5. Units of Service
6. Substance Abuse/Mental Health Treatment
7. Community Support

Process Evaluation Results

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- The drug of choice was most often opioids.
- 99% of participants were White.
- 89% were DV offenses.
- Referral source was probation/parole 100%.
- Time from admission to treatment averaged 60 days.
- Incentives to sanctions ratio was 3:2.
- Jail sanctions were given for 85% and they averaged 39 days.
- Averaged number of review hearings was 25 and the average length in program was 420 days.
- Average number of drug tests was 170, and 35% were positive.
- 70% failed in Phase 1.

Look For Patterns to Assess Program Operations

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- Identify where services were lacking or not timely.
- Did the court achieve its objectives toward its goals?
- Are services having the intended effect?
- Are we reaching the target population?
- Is there a pattern among different demographics?
- Are we meeting client treatment needs -treatment retention and compliance?
- Are there barriers to their success (transportation, housing)?
- WHAT CAN WE DO BETTER?? (Curious)

Outcome Evaluation

- Outcome evaluation looks at results – changes.
- Asks what effect is the program having on participants.
- Assesses the status of the participants after having exposure to the program.
- Measures goals.
- Asks what can be modified to make the program more effective.
- Most often is quasi-experimental design.

Outcome Measures

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- Retention Rate
- Success rate
- Abstinence (sobriety days)
- Improved Employment
- Improved Education
- Improved Quality of Life
- Improved Mental Health Status
- Medication Compliance
- Recidivism

Outcome Evaluations Results

Of the 490 participants that were discharged between 10/01/2019 and 9/30/2020:

- 79% were retained in the program;

- 54% successfully completed the program;
- 25% unsuccessful - absconded;
- 17% unsuccessful - noncompliant;
- 2% unsuccessful – new offense;
- 2% voluntarily withdrew.

Look at the population that failed also!

- High rate of absconding? What is a high rate?
- What type of noncompliance is grounds for termination?
- New offense?

Outcomes Evaluation Results

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- Graduates averaged 145 consecutive days of sobriety
- 52% improved their employment status while working the program*
- 40% improved their education level
- 82% were fully compliant with their medication
- 98% improved their mental health
- 97% improved their quality of life
- 1% were rearrested while working the program
- 4% were rearrested after having completing a program

** Consider looking at who was unemployed at admission compared to discharge.*

Program Modifications!

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- Determine where services are lacking and fill in gaps.
- Identify difficult populations.
- Determine if the resources can be increased.
- Determine whether your program is successful enough to convince stakeholders that it should continue operating.
- Determine whether your program is successful enough to replicate it elsewhere.

Nearly every component to the operation of a treatment court that was presented to you today can be measured!

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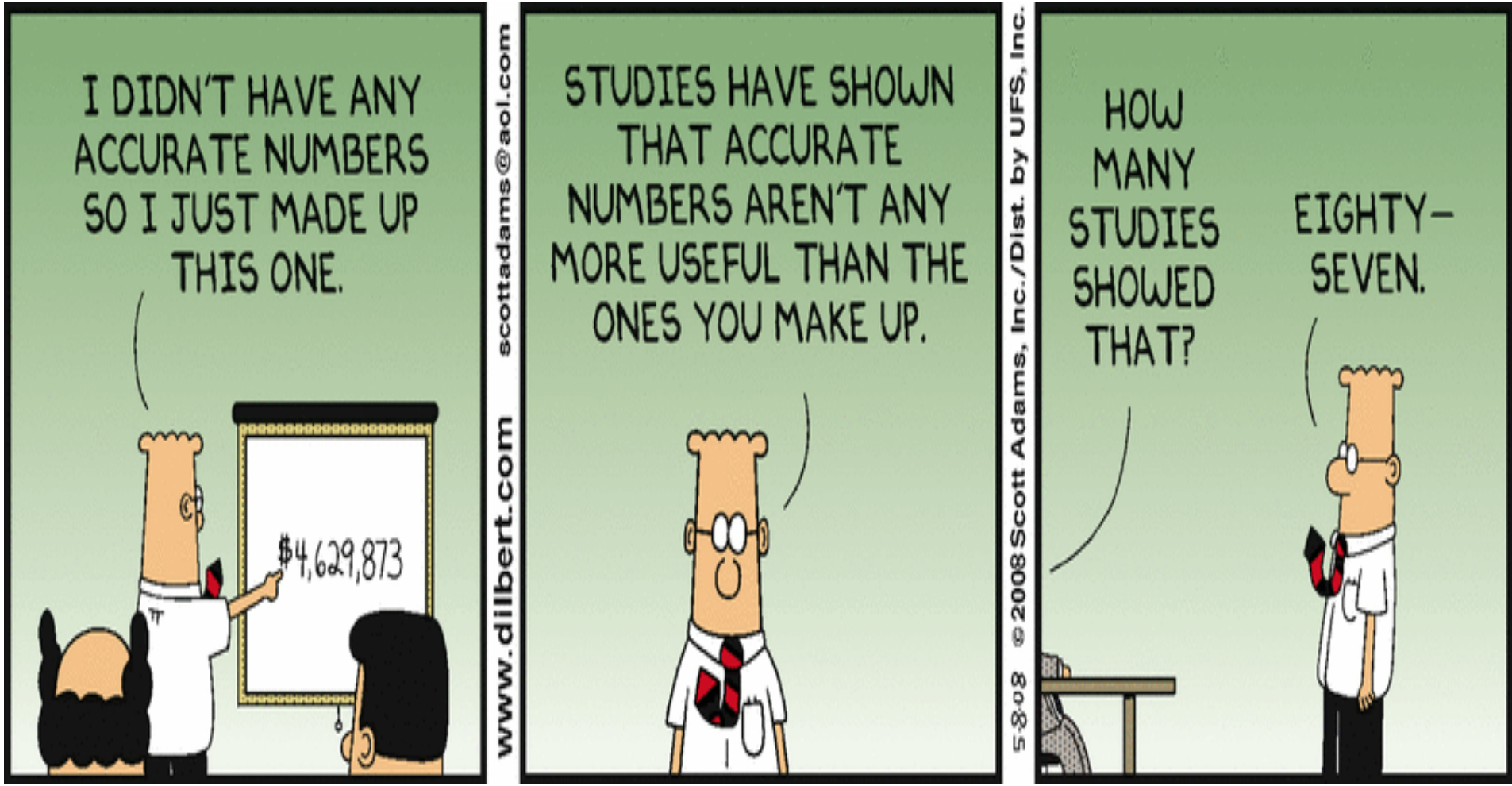
I DIDN'T HAVE ANY ACCURATE NUMBERS SO I JUST MADE UP THIS ONE.
$4,629,873
www.dilbert.com scottadams@aol.com
STUDIES HAVE SHOWN THAT ACCURATE NUMBERS AREN'T ANY MORE USEFUL THAN THE ONES YOU MAKE UP.
5-8-08 © 2008 Scott Adams, Inc./Dist. by UFS, Inc.
HOW MANY STUDIES SHOWED THAT?
EIGHTY-SEVEN.

Equity and Inclusion

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"Individuals who have historically experienced sustained discrimination or reduced social opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other individuals to participate and succeed in the Drug Court." - NADCP V.I

A. Equivalent Access

B. Equivalent Retention

C. Equivalent Treatment

D. Equivalent Incentives & Sanctions

E. Equivalent Dispositions

F. Team Training

Why is E & I Important?

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- 21% of Drug Court participants are African-American; &
- 10% are Hispanic or Latino (Bureau of Justice Assistance, 2012; Huddleston & Marlowe, 2011).

BUT:

- 28% of arrestees and probationers were African-American and approximately 13% of probationers were Hispanic or Latino.

Why is E & I Important?

- Some evidence suggests that a smaller percentage of African-American or Hispanic participants graduate (25-40%)
- Varying results across studies
- If disparities exist may be due less to race and more to societal burdens.

  - unemployment
  - undereducated

NADCP
National Association of Drug Court Professionals

Equity & Inclusion

Equivalent Access Assessment *and* Toolkit

Adult Drug Court

Best Practice Standard II

How Can We Measure?

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- Track race/gender/age among arrestees.
- Track race/gender/age referrals to program.
- Track race/gender/age admissions vs. rejections.
- Track retention rate of different races/gender/age.
- Track race/gender/age success rate.
- Document referral and admission processes.

ASK:

- Are they proportional to majority?
- Are the rates representative of the population at each stage?
- Can you identify red flags?

Table 1. Example of EIAT results

Access Step	Black Men	Black Women	White Men	White Women	TOTAL
Number of Drug Cases Disposed	35	10	35	20	**100**
Referred	5 (14.2%)	1 (10%)	14 (40%)	11 (55%)	**25** (25%)

Do not forget other underserved groups. Do you collect data on the following characteristics that could be associated with your underserved group?

- Physical or intellectual disabilities
- Mental health status
- Sexual orientation
- Religious affiliation
- Level of acculturation
- Veteran status
- Socioeconomic status (such as professionals, blue collar workers, chronically unemployed individuals)

If you do not already collect this information, add some questions to your intake form about self-identified ethnic culture and other characteristics relevant to the local population that could be served by your treatment court.

To identify whether you have an underserved group, use the **Equity and Inclusion Assessment Tool (EIAT)** to track a referral cohort as it progresses through the different stages of treatment court. Applying the EIAT is a good first step to help you identify whether you have an underserved group.

Table 1 shows an example.

In this example, black men with a drug case disposed have a 14% chance of being referred to treatment court, black women have a 10% chance, etc.

Note that when you do this statistical analysis, it may be easiest to just use drug cases, but other case types may be associated with drug-using behavior. One state found that 33% of treatment court participants had a non-drug charge.

STAY CURIOUS
MY FRIENDS
memegenerator.net

MICHIGAN VETERAN RESOURCE SERVICE CENTER

No Wrong Door for Michigan Veterans

The Michigan Veteran Resource Service Center and **MichiganVeterans.com** provide one-stop access for veterans, members of the National Guard and Reserve and their families seeking information, resources and support as they transition through each chapter of their lives.

Callers to **1-800-MICH-VET (1-800-642-4838)** are provided information about veteran-specific programs as well as referrals to programs available to all Michigan citizens.

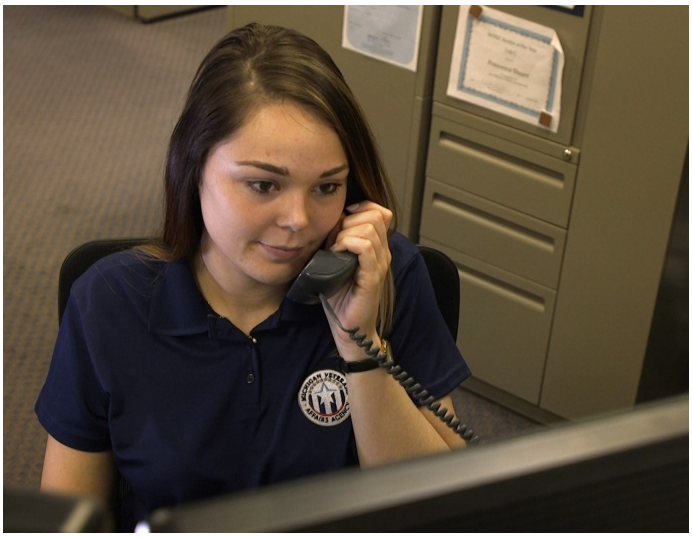
Connections to Resources

Strategic partnerships with accredited veteran service offices, regional Veteran Community Action Teams and MI 2-1-1 allow Michigan veterans to connect with federal benefits, state programs and services and resources with one call.

MichiganVeterans.com and **1-800-MICH-VET (1-800-642-4838)** provide 24/7 access to information and resources, with live assistance always available by phone.

Resource Center and Website Services

- Request a DD-214.
- Refer veterans to local accredited service officers for assistance with compensation claims and an overview of benefits.
- Find emergency financial assistance through a variety of state and other local programs.
- Refer veterans to supportive services to keep them and their families in housing.



- Answer questions about 100 percent disabled veteran benefits.
- Discuss VA disability applications.
- Help veterans apply for a high school diploma and find Dependent Educational Assistance Program information.
- Find information on driver's license designation and veteran-friendly employers.
- Access a calendar of veteran-related events around the state.
- Assist with coordination of military funeral honors, burial assistance and survivor benefits.
- Assist with special requests from legislative offices.
- Collaborate with other state agencies regarding veterans benefits.
- Escalate special cases to the federal VA.
- Explain process for obtaining a Veteran ID Card.

For more information on these and other benefits, call **1-800-MICH-VET (1-800-642-4838)**, visit **MichiganVeterans.com** or contact a Veteran Service Officer.